# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

## No. 230.

ROBERT L. WEST AND GEORGE I. KLINE, PLAINTIFFS IN ERROR,

vs.

THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED MARCH 1, 1902.

(18,855.)

21276

(18,855.)

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1903.

## No. 230.

---

ROBERT L. WEST AND GEORGE I. KLINE, PLAINTIFFS IN ERROR,

*vs.*

THE STATE OF LOUISIANA.

---

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

---

INDEX.


| | Original. | Print |
|---|---|---|
| Caption | *a* | 1 |
| Proceedings in criminal district court for parish of Orleans | 1 | 1 |
| Motion and order to file information | 1 | 1 |
| Information | 1*a* | 1 |
| Endorsements on information | 1*b* | 2 |
| Arraignment | 2 | 3 |
| Plea to the jurisdiction | 3 | 3 |
| Plea to the jurisdiction | 5 | 5 |
| Plea to the jurisdiction | 6 | 5 |
| Notes taken to plea to jurisdiction and proceedings | 7 | 6 |
| Trial | 10 | 7 |
| Affidavit of R. T. Walsh | 14½ | 10 |
| Demurrer to affidavit | 15 | 11 |
| Testimony of Felix Couturie | 16 | 12 |
| E. T. Kern | 17 | 13 |


---

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 22, 1904.

| | Original. | Print |
|---|---|---|
| Motion to read testimony taken in lower court (Thebaud's) | 18 | 14 |
| Objection to reading said testimony | 18 | 14 |
| Order to read testimony | 18 | 14 |
| Exception to testimony | 18 | 14 |
| Testimony of Judge T. M. Gill, Jr. | 19 | 14 |
| Henry Mooney | 22 | 16 |
| A. B. Henriques | 24 | 17 |
| Bill of exceptions | 30 | 21 |
| Testimony of Paul G. Thebaud | 31 | 21 |
| L. T. Kirn | 36 | 26 |
| Admissions as to Manners, or Kern | 37 | 27 |
| Testimony of T. E. Manners | 38 | 27 |
| T. E. Manners | 40 | 30 |
| Edward Noonan | 42 | 31 |
| Ed. Moore | 46 | 36 |
| James Gillan | 49 | 39 |
| Edward W. Thomas | 52 | 41 |
| Captain R. Walshe | 56 | 45 |
| Mr. H. Watcham | 63 | 51 |
| Edw. Thomas (recalled) | 66 | 54 |
| Aug. Puredis | 67 | 55 |
| William Kundertt | 70 | 57 |
| Sergeant Fisher | 73 | 60 |
| Mrs. John Smith | 75 | 63 |
| Captain Miller | 77 | 64 |
| Leon Marrerro | 78 | 66 |
| Sheriff Marrerro | 80 | 68 |
| George I. Kline (for himself) | 83 | 70 |
| Robert L. West (for himself) | 88 | 75 |
| Charge of court | 89 | 75 |
| Plea to the jurisdiction | 95 | 80 |
| Motion for new trial and bills of exception | 96 | 81 |
| Bill of exception No. 1 | 97 | 81 |
| Plea to jurisdiction | 97 | 81 |
| Testimony of Paul G. Thebaud | 98 | 82 |
| T. E. Manners (alias Kerns) | 103 | 87 |
| Sergeant Kelley | 106 | 89 |
| Ruling on plea | 107 | 90 |
| Judge's certificate | 108 | 91 |
| Bill of exceptions No. 2 | 109 | 91 |
| Testimony of Felix Coutuie | 109 | 91 |
| L. T. Kirn | 110 | 92 |
| Judge's certificate | 112 | 94 |
| Bill of exceptions No. 3 | 113 | 94 |
| Objections to testimony of Thebaud | 113 | 95 |
| Testimony of T. M. Gill | 114 | 95 |
| Henry Mooney | 118 | 97 |
| A. B. Henriques | 120 | 98 |
| Further objections | 121 | 99 |
| Ruling of the court | 122 | 100 |
| Judge's certificate | 125 | 102 |

| | Original. | Print |
|---|---|---|
| Bill of exceptions No. 5 | 126 | 102 |
| Testimony of Paul G. Thebaud | 126 | 103 |
| T. E. Manners | 131 | 107 |
| Plea to jurisdiction | 134 | 109 |
| Ruling on plea | 135 | 110 |
| Judge's certificate | 136 | 111 |
| Bill of exceptions No. 6 | 137 | 111 |
| Requests to charge | 137 | 111 |
| Judge's certificate | 137 | 111 |
| Bill of exceptions No. 7 | 138 | 112 |
| Testimony of George I. Kline | 138 | 112 |
| Judge's certificate | 140 | 113 |
| Bill of exceptions No. 8 | 140 | 114 |
| Charge and exceptions | 140 | 114 |
| Judge's certificate | 141 | 114 |
| Bill of exceptions No. 9 | 141 | 115 |
| Charge and exceptions | 141 | 115 |
| Judge's certificate | 142 | 115 |
| Bill of exceptions No. — | 142 | 115 |
| Motions for new trial overruled | 142 | 115 |
| Judge's certificate | 143 | 116 |
| Motion for a new trial | 144 | 116 |
| Supplemental motion for a new trial fixed for trial | 148 | 119 |
| Supplemental motion for new trial | 149 | 119 |
| Supplemental motion for a new trial | 151 | 120 |
| Affidavit attached to same | 154 | 123 |
| Affidavit of Edward Kern | 156 | 123 |
| Copy of indictment in New York against Edward Kern | 158 | 124 |
| Motion in arrest of judgment | 163 | 127 |
| Reasons for refusing motion in arrest of judgment | 178 | 141 |
| Additional supplemental motion for a new trial | 179 | 142 |
| Motion for a new trial, arrest of judgment refused, and sentence of the court | 180 | 142 |
| Written reasons of the court for refusing the motion for a new trial, supplemental motion for new trial, and additional motions for new trial | 182 | 143 |
| Motion for a suspensive appeal | 184 | 144 |
| Motion for suspensive appeal and bill of exceptions | 185 | 145 |
| Assignment of errors | 186 | 145 |
| Certificate of clerk attached to transcript of appeal | 189 | 147 |
| Filing of transcript of appeal | 190 | 148 |
| Agreement to continue cause | 190 | 148 |
| Cause continued | 191 | 148 |
| Motion and order to strike names of counsel from docket | 191 | 149 |
| Cause submitted | 192 | 149 |
| Opinion of the court | 192 | 150 |
| Final judgment | 213 | 164 |
| Memorandum of submission of petition for rehearing | 214 | 164 |
| Petition for rehearing | 214 | 165 |
| Rehearing refused | 218a | 168 |
| Petition for writ of error | 218a | 169 |

| | Original. | Print |
|---|---|---|
| Endorsement on petition for writ of error and order | 224 | 173 |
| Assignment of errors | 224 | 173 |
| Copy of writ of error lodged in the clerk's office of the supreme court | 228 | 176 |
| Original writ of error | 233 | 178 |
| Citation and service | 235 | 179 |
| Certificate of clerk of supreme court attached to transcript | 237 | 180 |
| Certificate of the chief justice of Louisiana legalizing signature of clerk | 237 | 180 |
| Certificate of clerk legalizing signature of the chief justice | 238 | 181 |

a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

GEORGE I. KLINE and ROBERT L. WEST, Plaintiffs in Error,
*versus*
THE STATE OF LOUISIANA, Defendant in Error. } No. 14525.

Lazarus & Luce, Henriques & Dunn and Herman Michel, for plaintiffs-in-error.

Walter Guion, attorney general, for defendant-in-error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty days (30) from the fourteenth day of February, A. D. 1903.

TRANSCRIPT OF RECORD.

1 *Filing of Information.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

TUESDAY, *February 25th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge; S. A. Montgomery, ass't dist. attorney.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

On motion of the State, the following information having been regularly apportioned by lot to section B of this court, is ordered filed, to-wit:

*Information for Grand Larceny.*

1a THE STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Criminal District Court for the Parish of Orleans.

Henry Mooney, assistant district attorney for the parish of Orleans, who in the name and by the authority of the said State, prosecutes in this behalf, in proper person comes into the criminal

district court for the parish of Orleans, in the parish of Orleans, and gives the said court here to understand and be informed that one Robert L. West and one George I. Kline, each late of the parish of Orleans, on the fourteenth day of January in the year of our Lord one thousand, nine hundred and two, with force and arms in the parish of Orleans aforesaid, and within the jurisdiction of the criminal district court for the parish of Orleans,

One travelling case of the value of ten dollars, one pipe of the value of fifteen dollars, one watch fob of the value of thirty dollars, one knife of the value of three dollars, one razor case of the value of one dollar, one set of studs of the value of twenty dollars, two pearl shirt studs of the value of two hundred dollars, fifty pins of the value of seven hundred and fifty dollars, two belt pins, and one broach of the value of fifty dollars, two pearl sleeve links of the value of two hundred dollars, one watch ring of the value of fifty dollars, fifty-three scarf pins of the value of one hundred and fifty dollars, one watch of the value of five dollars, one small locket of the value of five dollars, two scarf holders of the value of four dollars, three studs of the value of three dollars, one fox's head of the value of seven dollars, one pair of cuff links of the value of ten dollars, two shirt buttons of the value of fifty cents, one set of vest buttons of the value of sixty-five dollars, one set of green stone buttons of the value of twenty dollars, one bag and toilet set of the value of seventy-five dollars.

All of said values being in the lawful currency of the United States of America,

Of the goods, property, and chattels of one Paul G. Thebaud, then and there being found, feloniously did steal, take and carry away the same, contrary to the form of the statute of the State of Louisiana in such case made and provided, and against the peace and dignity of the same.

(Signed) HENRY MOONEY,
*Assistant District Attorney for the Parish of Orleans.*

1b [Endorsed:] Bail $500 each Section B 31923 State of Louisiana *versus* Robert L. West and George I. Kline Information for grand larceny. Filed February 25th, 1902. (Signed) A. J. Desmond minute clerk. Each arraigned February 28th, 1902, and each pleaded not guilty. (Signed) A. J. Desmond, minute clerk

[Endorsed:] March 11th, 1902. Motion to reduce bail herein, is refused. (Signed) A. J. Desmond, minute clerk. May 26th, 1902. Motion for a new trial, supplemental motion for a new trial, and additional supplemental motion for new trial, heard, and submitted, and for reasons dictated to the official stenographer and filed—are refused. (Signed) A. J. Desmond, minute clerk. May 26th, 1902. Motion in arrest of judgment filed, and submitted, and for the reasons dictated to the official stenographer, and filed, is refused. (Signed) A. J. Desmond, minute clerk.

[Endorsed:] New Orleans, April 4, 1902 Guilty as charged (Signed) Abe Levi, foreman May 26th, 1902. Sentence Each to the State penitentiary, for a term of three years, and to pay the costs of prosecution, subject to their right of commutation as provided by law. (Signed) A. J. Desmond, minute clerk.

2 *Arraignment.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

FRIDAY, *February 28th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge; S. A. Montgomery, ass't dist. att'y.

STATE OF LOUISIANA
*v.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

The defendants Robert L. 'Vest and George I. Kline in person being each placed at the bar of the court in custody of the sheriff were then and there arraigned on the charge preferred against them in the above information and after hearing the same read they each of them pleaded not guilty thereto. The court orders their pleas recorded and the defendants remanded to await further proceedings.

A. D. Henriques, Esq., of counsel for the defendants, Robert L. West and George I. Kline, this day upon arraignment of the said defendants, and with consent of the court reserve the right to withdraw their pleas of not guilty for the purpose of presenting such preliminary pleadings as may be hereafter desirable.

3 Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

And the said defendants, Robert L. West and George I. Kline, in their proper persons jointly and severally comes here into court, and having heard the said information read, says:

That the court ought not to take cognizance of the crime in the said information specified because, protesting that they, and each of them, are not guilty of the same, nevertheless, the said Robert L. West and George I. Kline avers and represents:

That the record herein and the evidence taken before the Hon. Thomas M. Gill, Jr., judge of the first city criminal court for the parish of Orleans, on February 19th, 1902, affirmatively shows that this honorable court has no jurisdiction over these accused, nor over the matters alleged, charged and specified in the said information, because on the examination hereof before the said first city criminal court for the parish of Orleans, the witness, Paul G. Thebaud, being sworn on behalf of the State, did testify that the alleged larceny as herein set forth was committed in the State of New York, and not within the jurisdiction of this honorable court.

2nd. Because the said Paul G. Thebaud is alleged in the instant information to be the owner of the property herein alleged to have been stolen.

3rd. Because, under the law, where property stolen in another State and brought to this State, if even by the thief, the crime of larceny is not committed in the State of Louisiana.

4th. Because, the said Paul G. Thebaud, in his testimony
4 and evidence given before the first city criminal court, and which is on file in this honorable court, and is part of the record hereof, testified that these accused were not the persons who committed the alleged larceny; but on the contrary that the larceny of his goods and chattels which are set forth in this information, was committed in the State of New York, and by one Edward Kerns, Jr., who was then in his employ.

And for further reason why this court has no jurisdiction herein, these defendants aver and represent that if a larceny was committed in the State of New York and stolen goods were brought into this State, then the courts of Louisiana have no jurisdiction even over the person or the subject-matter of the offense; that the jurisdiction over the offense is in another tribunal, to-wit, the court or courts of the State of New York.

Wherefore, the said Robert L. West and the said George I. Kline, defendants herein, pray judgment and that this honorable court ought not to take cognizance of the information herein, and that they and each one of them may be dismissed and discharged therefrom.

(Signed) HENRIQUEZ & DUNN, *Of Counsel.*

Robert L. West and George I. Kline, the defendants herein, being duly sworn, says that the foregoing pleas have been read and explained to them and that they understand the same, and that the allegations therein are true and correct to the best of their knowledge, information, and belief.

(Signed) ROBERT L. WEST.
" GEORGE I. KLINE.

Sworn and subscribed to before me, on this 27th, 1902, of March.

(Signed) A. J. DESMOND,
*Minute Clerk.*

Filed March 27th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

5 *Plea to the Jurisdiction.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

THURSDAY, *March* 27th, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m.

Present: The Hon. Frank D. Chretien, judge. S. A. Montgomery, ass't dist. attorney.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

The defendants, Robert L. West and George I. Kline, in person being each placed at the bar of the court in the custody of the sheriff, for trial, being attended by their counsel, Messrs. Henriquez & Dunn, present for the State, Henry Mooney, assistant district attorney, the State having announced to the court as not being ready to proceed to trial herein, thereupon, counsel for the defendant presented and read to the court a plea to jurisdiction herein; the court ordered the said plea filed, and upon agreement of the parties, the same be fixed for hearing on Monday, March 31st, 1902, the trial of the cause continued indefinitely, and the accused remanded to await further proceedings.

6 *Plea to the Jurisdiction.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

MONDAY, *March* 31*st*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m.

Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dist. attorney.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

The plea to the jurisdiction in the above cause came on for hearing this day. Present for the accused, A. D. Henriquez and Arthur

Dunn. Present for the State, Henry Mooney, assistant district attorney. And the court, having heard of the said plea to the jurisdiction, for the reasons orally assigned, ruled that the same be referred to the cause upon its merits; to which ruling of the court, counsel for the accused excepted, and with consent of the court reserves his right to file a bill of exceptions thereto.

7 Taken March 31st, 1902.

On the plea to the jurisdiction, counsel for the accused, in order to support said plea, proposed to read from the record the evidence taken on the preliminary hearing in this case, before the first city criminal court for the parish of Orleans, of the following-named witnesses: Paul G. Thebaud, T. E. Manners, Sergeant Kelly of the police force of New York; and that that evidence is offered for the sole purpose of showing the court that although the information herein charges these defendants, Robert L. West and George I. Kline, with the larceny of the property set forth in the information, and the said information alleging that said property was stolen in the parish of Orleans, and that one Paul G. Thebaud was the owner thereof, that the said heretofore mentioned evidence was to direct the attention of the court and to show that no larceny was committed in the parish of Orleans and State of Louisiana, but that, if any larceny was committed at all, it was committed not by these men, as sworn to by Paul G. Thebaud, but was committed by a man by the name of Edward Kerns, Jr., and was committed in the State of New York.

The State objected to the offer, through Assistant District Attorney Mooney.

By the COURT:

On the preliminary examination of the charge made against Robert L. West and one George I. Kline, of grand larceny, before the first city criminal court, certain parties were examined by the udge of that court, in order to determine whether there was such a case, as would justify sending of the parties to the proper tribunal to be tried. After an investigation, the case was sent to the criminal court, to be tried according to law. Subsequently, that is to say, on the 25th of February, 1902, an information was filed against the two accused for grand larceny; they were arraigned, and upon their arraignment leave was asked to file any plea that the accused may desire hereafter. Subsequently, a plea to the jurisdiction of this court was filed.

8 Upon the trial of this plea, the accused, through their counsel, proposed to offer in evidence the testimony of the witnesses mentioned in the offer, made by them above, upon which to rest the plea to the jurisdiction which they had filed in the court, upon the ground that the testimony forms part of the record of this court.

The testimony taken in the lower court is not testimony in this court, unless offered anew, and only under certain contingencies

provided by law can it be used at all. The State charges in the information a certain crime against the accused, which must be established by the State upon proper evidence, and what evidence will be adduced can only be disclosed upon the trial of the case. I do not consider that the testimony taken in the lower court is testimony in this court, and part of the record in the district court. It will become part of the record only after offer, and it can be offered and used only under certain circumstances. I therefore maintain the objection of the State, as I am of opinion that the testimony offered and intended to be used as the basis to the plea to the jurisdiction filed in this case, is not testimony, and cannot be considered by this court, unless it be offered under the provisions of law now existing governing such offers.

To the ruling of the court, counsel for the defendants reserve a bill, and as part of their bill of exceptions make the plea to the jurisdiction a part, as well as the testimony of Paul G. Thebaud, witness T. E. Manners, and the witness Sergeant John F. Kelly, of New York city.

The court rules that the plea to the jurisdiction which you have filed, having been submitted to the court, that the same is referred to the merits, to be there tried after testimony shall have been offered on behalf of the State and the defendant, in order to determine from that testimony whether this court has jurisdic-

9 tion of the subject-matter, or not.

Reported March 31st, '02, in open court, before Hon. Frank D. Chretien, judge, Henriquez & Dunn representing the accused.

(Signed) STURGES Q. ADAMS,
*Official Stenographer.*

Transcript of notes of proceedings had on the plea to jurisdiction. Filed April 3rd, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

10 *Trial.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

THURSDAY, *April 3rd*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m.
Present: The Hon. Frank D. Chretien, judge.
" " " S. A. Montgomery, assistant district att'y.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

The defendants, Robert L. West and George I. Kline, in person, were each placed at the bar of the court in custody of the sheriff,

for trial, being attended by their counsel, Messrs. Henriquez & Dunn. Present for the State, Henry Mooney, assisted by S. A. Montgomery, assistant district attorneys. The parties having announced to the court that they were ready to proceed herein, the following jurors, to-wit: E. F. Boelle, Ernest Pottharst, Abe Levi, Edward Ducatel, and Wm. H. Glynn, were duly sworn, examined upon their *voir dire*, regularly accepted, empanneled, and were duly sworn to serve as such in this cause. The information together with three of the defendants thereto, having been read to the jury, Felix Couturie and Deputy Sheriff Kirn were duly sworn, and were examined as witnesses upon the part of the State, and were cross-examined by counsel for the defendants. Hereupon, the State proposed to read the testimony of one Paul G. Thebaud, as adduced before the lower court, to the jury, to which proposition the counsel for defendants objected; and the matter being fully discussed upon the part of the parties, and the counsel for defendants desiring to further discuss the matter, Judge T. M. Gill, Jr., Henry Mooney, and A. D. Henriquez, Esq., were duly sworn and testified as to the manner
11 of proceedings had before the lower court, with reference to the testimony of the said Paul G. Thebaud as aforesaid. Hereupon, counsel for the defendants resumed the argument as to the regularity and admissibility of the said testimony as proposed to be read by the State. Whereupon, the hour of adjournment having arrived, the court orders further argument on the aforesaid matter continued until the next session of section B of this court. Upon agreement of the parties, the court cautioned the jury herein empaneled and sworn, and ordered that they be discharged to appear in their seats in court on Friday, April 4th, 1902, at 10:30 o'clock a. m. The witnesses were discharged to appear in court on the above date and hour, without further notice, and the accused were remanded to await further proceedings.

12 *Trial.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

FRIDAY, *April 4th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m.
Present: The Hon. Frank D. Chretien, judge
" " " Henry Mooney and S. A. Montgomery, ass't dist. attys.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

Subsequently, to-wit, on this Friday, the 4th day of April, 1902, the defendants, Robert L. West and George I. Kline, in person be-

ing each returned and placed at the bar of the court in custody of the sheriff, being attended by their counsel, Messrs. Henriquez & Dunn; present for the State, Henry Mooney and S. A. Montgomery, assistant district attorneys, and the following jurors, to-wit: E. F. Koelle, Ernest Pottharst, Abe Levi, Edward Ducatel, and William H. Glynn, who had been regularly accepted, empanneled, and duly sworn to serve as such in this cause, and who had been cautioned by the court and discharged to appear in court in their seats as jurors herein on this day, being present in open court and in their seats, were then polled by the sheriff, and being announced complete, and correct by the said sheriff, and the parties herein having announced to the court that they were ready; thereupon proceedings herein were resumed. Thereupon A. D. Henriquez, Esq., of counsel for the defendants, announced to the court his desire to urge further objection, to the proposition of the State on the reading of the testimony of one Paul G. Thebaud, as adduced before the court below, and the matter being finally submitted on the part of the parties; thereupon the
13 court dictated to the official stenographer of section B of this court, certain reasons and overruled the objection of counsel for the defendants. Counsel for the defendants excepted to the ruling of the court, and with consent, reserved the right to file a bill of exceptions thereto, making the evidence herein heard, and the reasons of the court for overruling as aforesaid, a part of said bills of exception. The jurors herein, having been retired during the above proceedings, were then returned to their seats. Hereupon the State read the testimony of Paul G. Thebaud to the jury, the same having been adduced before the lower court, the cross-examination of the witness, Paul G. Thebaud, before the lower court, being here read to the jury by A. D. Henriquez for the defendants. The State having here made certain admissions, then read to the jury the testimony of one T. D. Manners, alias Kern, as adduced before the court below, without objections on the part of the defendant-; whereupon counsel for the defendants presented and read to the court a plea to the jurisdiction, which plea being filed, and after hearing argument thereon, on the part of the parties, and the same being submitted, thereupon, for the reasons dictated to the official stenographer, the court then and there overruled the said plea to the jurisdiction, with a reservation to the defendants; counsel for the defendants excepted to the said ruling, and with consent of the court, then reserved the right to file a bill of exceptions thereto, making the testimony of Paul G. Thebaud and T. D. Manners, alias Kerns as read to the jury by the State, a part of said bill. Edward Noonan and Edw. Moore, James Gillen, Edw. W. Thomas, Capt. R. T. Walshe, H. Watcham, Aug. Puriden, Wm. Kundert, Sergeant John Fisher, Mrs. Smith, Capt. B. Miller, L. A. Marrero, L. Marrero, were duly sworn, and were examined as witnesses on the part of the State, and were cross-examined by counsel for defendants. During the above examination of witnesses on the part of the State, a certain valise

containing a certain lot of jewelry, being identified, was then and there offered in evidence, without objection on the part of the defendants. The defendants being each duly sworn, then testified in their own behalf, and were cross-examined by the
14 State. Counsel for the defendants having produced a certain affidavit made before the lower court, and reading the same, together with certain documents, and after reading the testimony of one Sergeant John F. Kelly, offered each of same in evidence on behalf of the defendants, without objections on the part of the State, the parties having announced to the court that their case was closed. Henry Mooney, assistant district attorney, then opened and addressed the court and jury in argument herein, being following in argument by Messrs. Dunn & Henriquez, of counsel for the defendants, S. A. Montgomery, assistant district attorney, then closing the argument herein on behalf of the State; the court then read to the jury certain written instruction, after which, counsel for the defendants excepted to certain several portions of the charge in general, and to the refusal of the court in delivering certain specials as requested on the part of the defendant-, and with consent of the court reserved the right to file bills of exception, in each of the said several instances; thereupon, the jury being retired to consider of their verdict herein, and having duly considered of the same, returned into open court the following verdict, to-wit: "New Orleans, April 4th, 1902. Guilty as charged." Signed, Abe Levi, foreman. And the jury being polled as to the said verdict, and after hearing the same read by the minute clerk, each of whom declared the aforesaid verdict to be his verdict, and the jurors herein being unanimous as to the verdict and as returned, thereupon the court orders the same recorded, the jury discharged from the case, and the accused each remanded to await further proceedings.

14½ *Affidavit.*

STATE OF LOUISIANA, }
*Parish of Orleans.* }

First City Criminal Court.

THE STATE
*vs.*
ROBERT L. WEST, GEORGE I. KLINE.

Personally appeared before me, Jos. Ferry, assistant clerk, first city criminal court, Capt. R. T. Walsh, 1st precinct, who having been duly sworn doth depose and say; Information received; that on the 14th day of January, 1902, in the parish of Orleans aforesaid, and within the jurisdiction of the first city criminal court, one Robert L. West and George I. Kline did then and there, one lot of

jewelry valued at twenty-five hundred dollars, of the goods, property and chattels of one T. E. Manners, therein and there being found feloniously did steal, take and carry away, contrary to the form of the statute of the State of Louisiana in such case made and provided and against the peace and dignity of the same.

(Signed) R. T. WALSH.

Sworn to and subscribed before me this 16th day of January, 1902.

State witnesses:
Capt. R. T. Walsh, 1st precinct. Mr. Smith
Edward Kern, alias Manners, in custody. Mr. Leo A. Marrero
Edward Noonan, St. Charles hotel, 722 Kelerec. Capt'n Rennyson
Ed. Moore, 1740 Erato James Feny
James Gillen, 325 S. Liberty. Felix Couturie
Aug. Pusidere, 321 N. Rampart Capt. B. Muller.
L. H. Marrero, sheriff Jefferson parish

Endorsed as follows: The State *v.* Robert L. West and George I. Kline; Jan. 13th, 1902; Captain R. T. Walsh, prosecutor; affidavit for grand larceny; decision; New Orleans, Feb. 13th, 1902, C. D. C., bond $500; signed Thomas M. Gill, Jr., judge first city criminal court; January 10th, 1902, filed affidavit, 23, 3,000; New Orleans, La., Jan'y 16, 1902; filed affidavit returned; arraigned and pleaded not guilty; bond, $3000 each; Jan'y 21st, '02, continued by the State; Jan'y 25th; Feb'y 7th, '02; cont' Feb. 13; 3 issued; 25 issued; 22 issued.

15 First City Criminal Court of New Orleans.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 4849.

And the said Robert L. West and George I. Kline, the defendants herein, cometh into court here, and having heard the said affidavit herein read, each and severally the said defendants say, that protesting that they and each one are not guilty as in the said affidavit alleged, yet nevertheless they and each one aver that the said affidavit and the matters as therein alleged and specified, are insufficient in law, and that they, the said Robert L. West and George I. Kline, are not bound by the law of the land to answer the same. That the said affidavit is vague, indefinite, and uncertain, and this the said Robert L. West, and the said George I. Kline, pray for judgment, and that by the court here they and each one may be dismissed and discharged from the premises in the said affidavit charged and specified.

Robert L. West and George I. Kline, *who* being duly sworn deposes and says: That the foregoing demurrer has been explained to them, and to each one, and that the allegations thereof are true and correct to the best of their knowledge, information and belief.

(Signed) G. I. KLINE.
R. L. WEST.

Demurrer,
Jan'y 21st, 1902.
Demurrer filed this day.
JAMES SCHILLIN,
*Minute Clerk.*

New Orleans, Jan. 21, 1902.
Demurrer overruled,
THOMAS M. GILL, JR., *Judge.*

16 FELIX COUTURIE, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. Mr. Couturie, do you know Paul G. Thebaud?
A. Yes, sir.
Q. Do you know whether he lives in the city of New Orleans? How long have you known Mr. Thebaud?
A. I made his acquaintance when he came to New Orleans.
Q. Do you know the family?
A. Yes, sir.
Q. Do you know that they live in New York city?
A. Yes, sir.
Q. Do you know where Mr. Thebaud is now?
A. To the best of my knowledge, he is in New York at the moment.
Q. When did you see him last?
A. On the night that he left for New York.
Q. What night was that?
A. I don't remember the date, but I accompanied him to the train that night.
Q. What train was that?
A. The L. & N.
Q. Do you know where he was going?
A. New York.
Q. Do you know whether he had a ticket for New York?
A. Yes, sir.
Q. You saw him get on the train?
A. Yes, sir.
Q. Have you heard from him since?
A. Yes, sir.

Q. Where were the letters written from?
A. New York city.
Q. Where is Mr. Thebaud now?
A. I think he is in New York—I haven't heard from him in the last two weeks.
Q. Has he any residence in the State of Louisiana that you know of?
A. No, sir.
Q. Is he a resident of the city of New York?
A. Yes, sir.

Cross examination by Captain HENRIQUEZ:

Q. When did you hear from him?
A. About two weeks ago.
Q. You haven't heard since?
A. No, sir.
Q. You don't know where he is at this time?
A. No, sir.

17 E. T. KIRN, being first duly sworn, did testify as follows:

By Mr. MOONEY:

Q. Mr. Kirn, do you hold any position in the parish of Orleans?
A. Yes, sir.
Q. What is it?
A. Deputy criminal sheriff.
Q. Examine this slip of paper and tell me what it is.
A. It is a subpœna for Paul G. Thebaud, St. Charles hotel.
Q. Did you serve it?
A. I went there and made a diligent search for him, and left it in the hands of Mr. Cunningham, and Mr. Cunningham informed me that Mr. Thebaud had left this city since Jan. 21st.

Cross-examination by Captain HENRIQUEZ:

Q. Who is Mr. Cunningham?
A. One of the register clerks there, who looked over the books for me.
Q. Did you make any further inquiry to find out if Mr. Thebaud was in New Orleans?
A. No, sir. He told me he was there, and had left for New York on the 21st.
Q. Did you make any other inquiry, except to go to the St. Charles hotel and get what information you could from this man Cunningham?
A. No, sir.
Q. You never went any other place?
A. No, sir.

Q. Do you know where he is now?
A. No, sir, only they told me he went to New York.
Q. In the month of January?
A. Yes, sir.
Q. Do you know where he is now?
A. No, sir.

Redirect examination:

Q. When did they tell you that?
A. On the 26th day of March, the day the paper was issued.

Re-cross-examination by Capt. HENRIQUEZ:

Q. They told you he had left when?
A. On January 21st.

18 By Mr. MOONEY: Now, if the court please, we have shown by two witnesses that Mr. Thebaud is absent from the State, and I submit that sufficient showing has been made under the law, and that we now have the right to read the testimony taken in the lower court. I now propose to read the testimony of Mr. Thebaud.

Captain HENRIQUEZ: To which we object, first, because that nowhere in this evidence which was offered to lay a foundation for the introduction of testimony taken or alleged to be taken before the committing magistrate, of the witness Thebaud, is it shown that he is at this time out of the city of New Orleans this day, nor is there any evidence offered on behalf of the State to prove affirmatively, that the witness named Thebaud is permanently absent from the State of Louisiana. I have other objections to urge to the introduction of this testimony, but I cannot do it at this time, unless the court rules that it considers that sufficient foundation has been laid.

By the COURT: Upon the evidence offered, I will allow the testimony offered.

Captain HENRIQUEZ: You consider that sufficient foundation has been laid?

By the COURT: Yes, sir.

Captain HENRIQUEZ: To the ruling of the court on this point, we reserve a bill of exceptions.

For further reason why this testimony should not be read, I desire to offer proof. I ask Judge Gill to take the stand.

19 Judge T. M. GILL, JR., called to the stand in behalf of the witness upon being sworn did testify as follows:

By Capt. HENRIQUES:

Q. Judge Gill, you are the judge of the first city criminal court of New Orleans?
A. Yes sir.

Q. This is the affidavit against Kline and West which was made before your court?

A. Yes sir.

Q. Do you remember when Mr. Paul G. Thebaud testified in your court?

A. Well, I would rather see the record.

Q. Judge, can you remember whether he testified there, did you see him?

A. I met Mr. Thebaud, yes sir.

Q. Did he testify on the examination of the case or before the examination?

A. As I said, I would rather see the record, the record shows everything and should give the date.

Q. There is the record.

A. Yes sir, this record shows that he testified before the court—there is no date on it given.

Q. Do you remember as a fact whether he testified on the examination or before the examination of the case?

A. Well, I am not sure.

Q. Well, now, Judge, let me refresh your memory a little, do you remember when Mr. Thebaud was brought into court I objected to his testifying?

A. I remember it was stated to me that Mr. Thebaud who was staying at the St. Charles hotel was a witness in the case. I remember having the clerk send him a summons. I remember his going there. It was stated to me that he desired to leave for New York. He was called for the purpose of taking his testimony, and that you objected, and urged your objections, and that I took a recess for a certain length of time, and I remember that his testimony was heard.

20 Q. Do you remember that that took place, and that he testified in your court before the case was examined—before the examination was fixed?

A. Well, Captain, we try a great many cases.

Q. I know, Judge, but this is an important case.

A. That is a matter of indifference to me. I dispose of the cases, I certify to the record, and I don't make any attempt to remember.

Q. Do you remember as fact that Thebaud testified two or three days before the case was examined?

A. I am not prepared to say how many days.

Q. Do you know that he testified before the case was examined?

A. That is my impression.

Q. Judge, here are the notes of your stenographer; the case is called for the purpose of hearing testimony by one Paul G. Thebaud, a witness on behalf of the State.

A. Yes sir, I certified to that.

Q. Do you know that this happened before the case was examined?

A. It is not fresh in my mind, but I would not have certified to it if I had known it to be otherwise.

Q. Can't you testify to a fact; I am asking you to state a fact; do you know the date that Paul G. Thebaud testified in your court before the examination?

A. When the application was made, I understood he was about to leave for New York.

Q. Well, Judge, I am asking you about one single fact; do you know that Paul G. Thebaud testified in your court before the examination of this case?

A. I think when Mr. Thebaud took the stand it was after one o'clock, or around one o'clock, and court adjourned immediately after his testimony was heard, and that no other witness was heard that day.

Q. Do you know it as a fact that he testified before the other witnesses, that the other witnesses were only heard several days after?

A. That is my impression.

Q. Is it not a fact?

A. Well, that is the way, I remember it, that he testified
21 some time before the other witnesses.

Q. And before the case was examined?

A. I believe so.

Q. Can't you be any more definite than that, Judge?

A. It is very hard to remember the exact days that all the cases are disposed of. Sometimes we dispose of over fifty a week. It is very hard to remember them.

Q. Do you in every case take the testimony of witnesses before the examination in court, is not this a rare occurrence?

A. It does not occur regularly.

Q. Well, how many cases have you done it in besides this?

A. I have done it in other cases—the number I don't remember.

Q. Well, Judge, that is all.

22 HENRY MOONEY, being called to the stand by defense, being sworn, did testify as follows:

By Capt. HENRIQUES:

Q. Mr. Mooney, is it not a fact that Paul G. Thebaud testified before the case was examined in Judge Gill's court?

A. Well, my recollection is that he did testify as the first witness in the case, possibly a few days prior to the other witnesses.

Q. And before the case was set down regularly for examination?

A. Well, I could not swear to that, for the reason that I was trying cases in section A, and they sent for me to come over, I remember, though, that his evidence was not heard the same day the other witnesses' evidence was heard.

Q. It was heard before?

A. Yes sir.

Q. And the examination of the case was taken several days afterwards?

A. Yes sir, the rest of the witnesses were heard several days afterwards.

Q. Did Mr. Thebaud present an application in writing to the district attorney or his assistant asking that his testimony be taken in advance of the preliminary examination?

A. He did not, sir.

Q. Do you know of any notice having been served on West and Kline, the defendants, two days or at any time before Thebaud was examined?

A. I do not, sir.

Q. Do you know it or not as a fact that these men were brought over from the parish prison, and that Mr. Thebaud was to be exined as a witness, and that this took place. You were there at the time that Kline and West were brought over from the parish prison for the purpose of hearing Thebaud's testimony, because Thebaud was about to leave the city, and that at that time I interposed objections which are here noted in the record.

A. Yes sir, I have seen the objection, that is my recollection in the record.

Q. Didn't you argue the objections and contest them?

23 A. Yes, sir.

Q. Then this examination of Thebaud's as a matter of fact did take place before the case was regularly examined in the first city criminal court.

A. I don't know about that.

Q. Do you know that this case was fixed for the 21st, and that Thebaud testified on the 19th?

A. I don't recollect the date. If that is what the record shows that is about right.

Q. Do you remember that the case was regularly examined on Saturday?

A. No, sir, I don't remember that—I could not say one way or the other.

Q. Do you know that all the other witnesses in this case were heard on the examination, that their testimony was taken on the 25th and that Thebaud testified on the 19th, or the 21st, rather?

A. I don't recollect the date—that is about right.

24 A. B. HENRIQUES being duly sworn did depose and testify as follows: The case of the State of Louisiana *vs.* George L. West and Robert I. Kline was fixed for examination in the first city criminal court for January 25th of this year. On the 21st, in the morning I received a notice from our clients that they would be taken over to the first city criminal court. I went to the first city criminal court. The accused were called to the bar of the court, and I was informed at that time upon inquiry made that they were called for the purpose of hearing the testimony of one Paul G.

Thebaud, who was then about to leave the city; I then protested that as the examination of this case had been fixed for the 25th, that the proceedings then being had in the first city criminal court was irregular and not warranted by law. I had my objections noted at the time, and the objections which I had noted were as follows:

"This case was called for the purpose of hearing the testimony of one Paul G. Thebaud, a witness on behalf of the State. Counsel for defendants objected on the ground that Mr. Paul G. Thebaud is not a prisoner in jail; that he has not asked the court that his testimony be heard; that there is no evidence before the court to show that he has asked to be heard as a witness in this case; that the defendants are entitled under the law to two days' notice, if residents of the parish, of a service on them, and notice to hear testimony must be given two days in advance of the hearing of testimony. And the law provides, if they be non-residents, that they are entitled to ten days' notice. That the accused in this case are non-residents of the parish of Orleans, that they have at no time received notice that they were to appear here to-day for the purpose of hearing the testimony of this one witness; that there is nothing in the record to show that any application was made to the court, and notice given the defendants and district attorney by the witness, and for those reasons counsel for the defendants objects to the hearing of the testimony of said witness at this time." To which the court ruled.

"Which objection the court overrules for the reason that
25 the objections urged in the act quoted apply only to persons detained in jail, as what is commonly known as material witnesses, which does not apply to this witness Paul G. Thebaud."

To which ruling of the court defendant's counsel makes a note of objections as heretofore stated.

The witness Paul G. Thebaud was then put on the stand and my objections noted; it was on the 21st day of January. The examination of the case did not take place until the 25th day of January, 1902.

By Capt. HENRIQUES: I desire at this time to note the objections in this court; that the hearing of this testimony of the witness, Paul G. Thebaud before the first city criminal court was irregular, and not warranted in law; that the said Paul G. Thebaud was not committed as a witness either under bond or in jail; that there was no evidence given before the first city criminal court that the said Paul G. Thebaud asked that his testimony be taken in advance of the preliminary examination, nor was any notice served upon these accused of the intention to take the testimony of said witness Paul G. Thebaud prior to the examination of this case, which had been fixed for the 25th of January, 1902.

Furthermore, that no application was made to the district attorney for the parish of Orleans, or to any assistant district attorney that the witness desired that his testimony be heard in advance of

the preliminary examination; that no notice was served on these accused, or either one of them, as the law provides.

Furthermore, there is no certificate attached to the record, as the law provides, of the taking of this testimony of the witness Paul G. Thebaud before the first city criminal court on the 21st of January, 1902, as required by law.

Because the hearing of this testimony now would be in violation of article 9 of the constitution of the State of Louisiana, which provides: "The accused in every instance shall have the right to be confronted by the witness against him."

26 The State proposes to read the testimony of one Paul G. Thebaud, a witness for the prosecution, whom it is claimed is absent from the State. Counsel for these defendants further objects to the reading of this testimony of said absent witness for the following reasons:

First. Because it has not been shown that the witness is dead, insane or sick, nor has it been shown that the witness is absent by the procurement of these defendants or their counsel; that the reading of said testimony would be in violation of article 9 of the bill of rights of the constitution of the State of Louisiana.

It furthermore would be violative of the Constitution of the United States, article 6, and the fourteenth amendment of the Constitution of the United States.

27 By the COURT: The accused through their counsel, object to the reading of the testimony of Paul G. Thebaud, taken before the first city criminal court on the grounds:

That Mr. Paul G. Thebaud was not, at the time his testimony was taken in the first city criminal court a prisoner in jail; that he had not asked the court that his testimony should be heard; that there was no evidence before the court to show that he had asked to be heard as a witness in the case. That the defendants under the law were entitled to two days' notice if residents of the parish of Orleans of a service on them to hear the giving of the testimony, and that the law provides if they be non-residents, that they are entitled to ten days' notice. That the accused are non-residents of this parish, that they had at no time received notice that they were to appear on the day fixed to take the deposition of Thebaud for the purpose of hearing the taking of his testimony. That there was nothing in the record to show that any application was made to the court by the witness to have his deposition taken, and that no notice was given the defendant and district attorney by the witness of any desire on his part to have his testimony taken.

Second. That the testimony is not admissible in evidence, and cannot be read to the jury for the further reason, that they are entitled to be confronted with the witnesses against them in every instance, under article 9 of the constitution of 1898, and that they claim that privilege granted them by law; and at this time the further objection is made that the testimony cannot be read, because under article 9 of the bill of rights of this State, and article 6 of the

Constitution of the United States, and the fourteenth amendment of the Constitution of the United States, the accused are entitled to be confronted with their witnesses at all times, and they claim this right at present to the reading of the testimony, on the ground that said testimony cannot be read, and that they have to be confronted by the witnesses, unless it be shown that the witness
28 is dead, insane, sick or absent by the procurement of the defendant or his counsel.

The first objections are based upon the provisions of act 124 of 1896. This act was intended and passed to give relief to a class of people who previously when detained in jail as material witnesses had to await the trial of the case for their release, when unable to furnish security for their appearance. It gives them a privilege which the State cannot deny them, and which limits their confinement to as short a period as is compatible with the proper administration of criminal justice, and does away with the cruel wrongs that those unable to furnish bond are made to suffer. The act has reference to this class of witnesses alone, and its provisions cannot be extended to any other class of witnesses not within its province.

Mr. Thebaud was not a detained witness, and therefore the notices required by the act are not required of him.

The objections raised to the reading of his deposition on that ground is not therefore well taken, and is overruled. But, it is objected that the accused had no previous notice of the taking of the deposition of Mr. Thebaud; that they were entitled to some notice, and that they having objected to the taking of the deposition at the time, the same should not be read to the jury.

By article 140 of the constitution of 1898, the judges of the city criminal courts are given jurisdiction as committing magistrates with authority to bail or discharge. They, therefore, had the power not only to examine into a case, in order to determine whether the State had made a sufficient showing to send the accused to a higher tribunal for trial, but in line with that power, they had the right to take the deposition of any material witness whenever in their judgment necessity demanded such exercise of power, to prevent a failure of justice.

The act providing for the organization of these courts does not direct that any notice should be given the accused before the taking of the deposition of a witness for the State. Under it these
29 witnesses may be examined at any time, provided that they, the accused be not deprived of those rights secured to them by art. 9 of the constitution of 1898 of being confronted with the witnesses against them, or the right to defend themselves; to have the assistance of counsel, to have compulsory process, for obtaining witnesses in their favor. Of none of these rights have they been deprived. They were confronted with the witness Thebaud, and they were ably represented by leading members of the bar. They suffered no injury and the objection must be overruled.

The last objection is that they are entitled to be confronted with the witness at the present trial, and that under article 9 of the constitution they cannot be deprived of that right. Article 9 of the present constitution of 1898 differs from that of 1879 in having the words "in every instance" added. Article 9 of the constitution of 1879 among other things provides:

"In all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation, and to be confronted with the witnesses against him."

To this the three words "in every instance" are added, under article 9 of the constitution of 1898. Counsel argues that this means that in every stage of the proceedings that in so far as art. 123 of act 1898 provides for the reading of testimony of witnesses permanently absent from the State it is in conflict with the above quoted article of the constitution, and therefore inoperative. The words "in every instance" do not mean in my opinion, in every stage of the proceeding, but rather in every case, wherever a witness is to be examined. It only emphasizes the right to be confronted, and otherwise adds no conditions to the provisions of article 8 of the constitution of 1898. Whatever may be my own private or personal opinion as to the right of reading testimony of witnesses permanently absent from the State, without the procurement of the party against whom it is directed, may be, the question has entered the domain of "*stare decisis*," and under the well formulated de-
30 cisions of our supreme court on that point, I hold the objections not well founded, and I allow the testimony to be read.

To the ruling of the court, counsel representing the accused reserves a bill of exceptions, and makes note of his objections, as well as the testimony heard, a part of his bill, together with the judge's reasons.

*'imony of Paul G. Thebaud, Taken in the First City Criminal Court, Read to the Jury and Offered in Evidence.*

31 PAUL G. THEBAUD, sworn for the State, deposes as follows:

(By Capt. HENRIQUEZ for the defendants:)

Q. Are you in custody now as prisoner?

A. No, sir.

Q. Are you detained under a bond as an important witness, or as a material witness in this case?

A. No, sir. I have been served notice to appear here in this court.

Q. You were not put under a bond to appear as a witness?

A. No, sir.

Q. Have you at any time ever made any application to the court to have your testimony heard?

A. No, sir.

Direct examination by the STATE:

Q. Where do you live?
A. New York city.
Q. When did you come to New Orleans?
A. Last Saturday night.
Q. When do you expect to leave?
A. I want to go home tonight, very much.
Q. Do you know when you will return to this city?
A. I don't expect to return here.
Q. Kindly examine these articles, and select those that are your property, if any of them are.
A. This traveling case is mine.
Q. What is the value of that?
A. I couldn't tell you.
Q. Can you approximate it?
A. About ten or twelve dollars; fifteen dollars, or something like that. This pipe is worth about fifteen dollars; that is mine. That watch fob is worth about thirty dollars. This knife here I could not tell you what it is worth, exactly, about three or four dollars. These razors are not mine; if my memory holds, I bought the case and did not use it; but the razors are not mine.
Q. What is that case worth?
A. I can't tell you the value of these things, gentlemen; I am not a pawnbroker; perhaps one dollar and a half. There is a set of studs; I couldn't value those; they look like amethysts; I should think twenty or twenty-five dollars. Those I don't know what they are worth; I believe they are worth some two hundred dollars or more; a couple of pearl shirt studs. These things I couldn't value them at all.

32 By the COURT:

Q. Take them up one by one.
A. Here is a frog pin; I should imagine that was worth, I couldn't tell you; that was a present to me; perhaps one hundred dollars. One crown pin, about twenty-five dollars; another frog on ball, about ten or fifteen dollars. This pin, about forty dollars. Here is a pin with red stones, worth about fifteen dollars. Here is a golf pin, about two or three dollars; here is another, worth two or three dollars. Fifty pins here; I should think they would average between fifteen and twenty dollars apiece. These three pieces here, two ladies' pins and a brooch, possibly fifty dollars for the three pieces, more or perhaps less. There is a couple of pearl sleeve-links, I should imagine they are worth a couple of hundred dollars.
Q. They are your property?
A. Yes, sir. Here is a ring with a watch in it; it is an antique; say fifty dollars. Here is a second lot of scarf pins, fifty-three, about ten dollars apiece, perhaps; I don't know.
Q. Are they worth three and a half?

A. I don't care, anything; put down one hundred and fifty dollars for the lot. Here is a watch, worth, probably, five dollars; here is a little locket worth probably five or six dollars. This scarf-holder is worth a couple of dollars. There are three studs; I suppose they are worth a dollar apiece. Here is a fox head, worth seven or eight dollars, I suppose. Here is another scarf-holder, worth a couple of dollars. These scarf-holders are worth about two dollars apiece, I suppose. These cuff-links are worth about ten dollars. Here are a couple of shirt buttons worth twenty-five cents apiece, I suppose. Here are some vest buttons, fox's head, worth about sixty-five dollars. These buttons, green stones, I should think are worth twenty or twenty-five dollars. This box of cartridges is mine. This toilet set is part of the bag.

Q. Whose bag is that?

A. My bag.

Q. What is the bag and toilet set worth?

A. I guess, about seventy-five dollars.

By the COURT:

Q. Whose silver box is that?

A. It belongs to my wife.

33 Q. Those articles that you have mentioned, are your property?

A. Yes, sir.

Q. Do you know how they got away?

A. I know that they were stolen from me in New York State; further than that, I came down here, and found the man that robbed me of those things; I know nothing of anything else in the matter, except hearsay.

Q. You say that these things were taken from you in New York State?

A. New York city.

Q. Do you know a party by the name of Manners?

A. I don't.

By Capt. HENRIQUEZ: I object; we are not trying Manners, and the question is irrelevant.

By the COURT:

Q. Do you know a party by the name of Manners?

A. I never heard of him.

Q. When did you first see this property after it was stolen from you?

A. Yesterday morning, over at Gretna, at the sheriff's office.

Q. Who showed it to you there?

A. The sheriff or his son.

Q. That was the first time you had seen it since it was stolen?

A. Yes, sir.

Q. This property that you have identified in court, is the same

property that you saw over there, and is the same property that was stolen from you?

A. Yes, sir.

Cross examination by Capt. HENRIQUEZ:

Q. Mr. Thebaud, do you know these two gentlemen sitting here?

A. I do not.

Q. Were they ever in your employ?

A. Not so so far as I know.

Q. Is there any indictment or any criminal prosecution pending in New York State for the larceny of this property?

A. I got an order from the court for this man.

Q. Have you got it?

A. It was served on the sheriff. It was an indictment and bench warrant, I believe.

Q. With a warrant issued from the judge before whom the indictment was found, I presume?

A. Yes, sir.

34 Q. Against whom was the indictment presented?

A. Edward Kerns the younger.

Q. Is Edward Kerns either one of these two men?

—. ——.

Q. All of this property that you have enumerated here, was stolen from you?

A. It was, and those two pieces belong to my wife.

Q. And it was stolen from you in the State of New York?

A. Yes, sir.

Q. Where was it stolen from?

A. No. 158 Madison avenue.

Q. That is your home?

A. That is my home.

Q. You cannot be mistaken about this being your property?

A. As far as my knowledge, I believe it is my property.

Q. Was Kerns in your employ?

A. He was.

Q. When did he leave your employ?

A. Either the 29th of 30th of December, the day he stole these things.

Q. Under what circumstances did he steal this property? How did he come to get it?

A. He was my valet, and had access to it in my closet, and I sent him up the country in the morning. I was going out to spend Sunday in the country. Saturday morning, I sent him up, and he came back and went to the house in the afternoon, as far as I know, and Sunday night I found these things missing. When I went up the country Saturday night, he had taken these things away from the city house, and I was to stay with a friend of mine in the coun-

try, and he took my wife's things, which I got most of them back from White Plains, two or three miles out of the city, and he brought those things back to the city with him.

Q. Were there other articles stolen from you besides this?

A. Yes, sir.

Q. What did they consist of?

A. They consisted of the same line and maybe other things that I have not found yet. This ring with a watch in it, I never knew until a few days ago that it was gone.

Q. Did you ever search in any of the pawnbrokers' places here?

A. No, sir.

Q. Did you lose any diamonds either set in scarfpins, or any other besides those, and besides what you have recovered in New York city?

A. Yes, sir.

35 Q. There were other articles missing that you have not yet discovered?

A. Yes, sir.

Q. They were stolen all at the same time by this man?

A. I couldn't say that, because I was not with him, and he had a half of Saturday, and then he came to me the next morning. I went out in the morning at eight o'clock, and he took my wife's things from the country, and I haven't seen him since. I didn't discover the robbery until seven o'clock that night.

Q. Have you seen this man since you came to New Orleans?

A. Yes.

Q. When did you see him, and where?

A. Over at the Gretna jail, yesterday; and I have just seen him in this room a few minutes ago.

Q. That is the man who robbed you?

A. To the best of my belief.

Q. He is a man by the name of Kerns?

A. Edward Kerns the younger.

Q. How long have you had him in your employ?

A. About two months.

Q. Did you ever know him by the name of Manners?

A. I never did.

Q. What did he tell you his name was?

A. Edward Kerns, Jr.

Q. Did you know his parents?

A. I did.

Q. Are they in your employ?

A. Not now.

Q. They were?

A. Yes, sir; I engaged him at the same time.

Q. Were their names Kern?

A. Yes, sir.

Q. Is he the son of that man and woman?

A. Supposed to be.

Q. They acknowledged him their son?
A. They said he was.
Q. That is the man Kerns that you saw over in the Gretna jail?
A. Yes, sir.

I hereby certify that the above is a correct copy of the testimony of Paul G. Thebaud, given in open court on January 21st, 1902, in the presence of and within the hearing of the accused and counsel, who had the opportunity to examine the witness.

Approved:

(S'd) THOMAS M. GILL, JR., *Judge.*
(S'd) CHAS. A. BYRNES,
*Stenographer.*

36 L. T. KIRN, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. Did you have a subpœna for a party by the name of Kerns or Manners?
A. Yes, sir.
Q. How did that subpœna read?
A. It read, "Left in the care of Mr. C. C. Luzenberg."
Q. I mean, the name of the party on whom it was served?
A. Well, it read, "Edward Kern, alias T. E. Manners."
Q. Did you serve that subpœna?
A. I went to Mr. Luzenberg, and he told me he had nothing to do with this paper. I told Mr. King about it, and I was instructed to give it to Captain Rennyson. I went to Captain Rennyson, and he said this man was not there, that he had left the prison on the 25th of January, 1902.
Q. Mr. Kirn, you spoke of Captain Rennyson?
A. Yes, sir.
Q. Do you know if he occupies any official position?
A. Yes, sir; captain of the parish prison.

Cross-examination by Captain HENRIQUEZ:

Q. The only address you had for this man Kerns or Manners, or whatever his name was, was in care of Mr. Luzenberg?
A. Yes, sir; it was previous to——
Q. I am speaking about this, if you will just answer my questions, you will save a great deal of time. Was there any address given except that in care of Mr. Luzenberg?
A. No, sir.
Q. Now, then, who directed you to go to the parish prison?
A. Mr. King.

Q. Mr. King?
A. Yes, sir.
Q. He told you to make inquiry there?
A. Yes, sir.
Q. You saw Mr. Rennyson?
A. Yes, sir.
Q. And he is the captain of the parish prison?
A. Yes, sir.
Q. He told you what?
A. That Manners was not there; that he had left there on the 25th of January.
Q. Did he say where he had gone?
A. No, sir.
Q. Did he tell you whether he was in the city?
A. No, sir.
37 Q. Do you know whether he has left the State permanently, or not?
A. I do not, sir.

It is admitted on behalf of the State, and without the necessity of formal proof, that the man by the name of Manners or Kern, was taken back to the State of New York on a requisition from the governor of that State, honored by the governor of the State of Louisiana, charged with the stealing of this identical property in the State of New York, which is now made the subject-matter of this information.

38 *Testimony Taken in the First City Criminal Court and Read to the Jury by Mr. Mooney.*

T. E. MANNERS, No. 3100 Groveland avenue, Chicago, Ill., sworn for the State, deposes as follows:

Direct examination by the STATE:

Q. When did you arrive in this city, Mr. Manners?
A. I arrived in this city Monday evening one week ago.
Q. Are you the same T. E. Manners who was stopping at the St. Charles hotel on the 14th of this month?
A. Yes, sir; that is the day I arrived.
Q. Just state whether any property belonging to you was stolen from you while you were staying at the St. Charles hotel?
A. There was.
Q. Will you tell the court what that property consisted of?
A. Clothing, shirts, collars, cuffs and handkerchiefs, socks, brushes, and little private articles.
Q. Where did you leave these things?
A. In my room.

Q. I mean, were they scattered about the room, or did you have them in a satchel or valise, or something of that kind?
A. I refuse to answer that question.

By Captain HENRIQUEZ: We object to this testimony. We are not charged with stealing clothing; we ask that the testimony be stricken out of the record.
By the COURT: Objection sustained.

By the STATE:

Q. Besides this clothing, was there anything else stolen that day?
A. I refuse to answer.
Q. On what ground?
A. On the ground that I might incriminate myself.
Q. Are you acquainted with the parties here at the bar, Kline and West?
A. I am not acquainted with the parties.
Q. Do you recollect having seen either or both of them before the 14th of January?
A. I cannot positively say whether I have seen either one of them before the 14th of January; I thought I had seen one of them, but I was not sure.
39 Q. Which one did you think you had seen before?
A. I thought I had seen the man Kline, before.
Q. But you were not personally acquainted with him on this date?
A. No, sir.
Q. Did you ever have any dealings with either of them?
A. No, sir.
Q. Did you give either Kline or West, or both of them, anything?
A. I haven't given them anything.
Q. Did you authorize them to take anything from the St. Charles hotel?
A. I did not.
Q. Do you recollect having seen either of them at the St. Charles hotel?
A. I do recollect having seen one of them at the St. Charles hotel.
Q. Which one?
A. The man by the name of Kline.
Q. When did you next see him?
A. I seen him next over in Gretna jail.
Q. Of course, you don't know how he got there; I mean of your own personal knowledge?
A. No, sir.
Q. Where were you on the 14th of January?
A. On the night of the 14th of January, I slept at the St. Charles hotel.
Q. Did you make any complaint to the police on the 14th?

A. I did make a complaint.
Q. What time was it when you complained, Mr. Manners?
A. I cannot tell; it must have been about half-past twelve or one o'clock.
Q. Was that the night of the 14th, or early morning of the 15th?
A. Yes, sir.
Q. Where had you been that night?
A. I had been to the theatre.
Q. After the theatre, and before you made this complaint, had you returned to the St. Charles hotel?
A. I had.
Q. How long did you remain at the hotel?
A. Perhaps — half an hour or so.
Q. Did you make any complaint to anyone at the hotel?
A. Why, yes.
Q. Do you recollect to whom you made the complaint?
A. To the clerk.
Q. You don't know his name?
A. I don't.
Q. It was after making that complaint that you came to the police, or made your complaint to them?
A. They were the first ones to think of.
Q. Who do you mean by "them"?
A. The clerk, the man in the hotel.
Q. Where did you go to make your complaint to the police?
A. I did not really make any formal complaint; I just went down to the chief's office, and he tried to find out if they knew anything about it.
Q. You came to the chief's office; is that right?
A. Yes, sir.
Q. Who did you see in the chief's office, do you know?
A. Well, I don't know anything about that.
Q. I believe I neglected to ask you your occupation?
A. I am a clerk.
Q. Will you tell us for whom?
A. I decline to answer that.
Q. On what ground?
A. On the same ground as before.
Q. Look at this satchel or grip, and tell me if you can identify it.
A. I decline to answer.
Q. On what ground?
A. Same ground.

Above testimony approved by Judge Thomas M. Gill, Jr., and certified to by Charles A. Byrnes, stenographer.

*Testimony of T. E. Manners, Taken in the First City Criminal Court, Read to the Jury by Assistant District Attorney Mooney, and Offered in Evidence.*

By Captain HENRIQUEZ: At this time, if your honor please, I desire to file a plea to the jurisdiction of this court.

Plea to the jurisdiction filed, and argued by counsel for the accused, after which argument, the court ruled as follows:

By the COURT: After the State had read the deposition of P. H. Thebaud and Edward Kern, otherwise known as Manners,
41 taken before the first city criminal court, the accused filed a plea to the jurisdiction of this court, founded upon the ground that the testimony of Thebaud shows that the jewelry herein charged to have been stolen from him by the accused at the bar, had been stolen from him in the State of New York by Edward Kern, Jr., in December, 1901. The State has not closed its case, and whether it will establish hereafter the proper venue can only be determined by the testimony to be offered. If, instead of Kline and West, charged to have committed the offense, the information charged Edward Kern, Jr., with the offense, and the asportation was shown to have taken place in New York, there would be no doubt as to the force of the plea now filed; for our law does not recognize continuous asportation of property, and the taking in that case having been in New York, the offense would not exist in this State by the mere transportation of the property from the place of the taking to this place. But the information does not charge Edward Kern, Jr., or Manners, with the crime, but George I. Kline and Robert L. West.

It is elementary in law that a thief may steal from a thief; the dominion over the property by the first thief being, by fiction of law, considered as that of the owner. Kline and West can therefore be charged with having stolen property from P. G. Thebaud in this city on the 14th day of January, 1902, notwithstanding that the property had, in December, 1901, been stolen by Kern, otherwise known as Manners, from Thebaud in New York. If the property stolen be proved to have been stolen from Kern, in this city, on the 14th day of January, 1902, the charge would hold under the law, notwithstanding the fact that the property had, in December, 1902, been stolen by Kern from Thebaud in the State of New York.

The accused had on a previous day filed a plea to the jurisdiction of this court, founded on the same grounds, which plea had been referred by the court to the merits of this case. Both pleas are now considered by the court, and for the reasons given, they are overruled, reserving to the accused the right to file pleas to the jurisdiction of the court hereafter, should occasion demand or justify it.

42 Captain HENRIQUEZ: To your honor's ruling, we file a bill of exceptions; and in support of that bill, I desire to make

the evidence read to the jury, of Thebaud and this man Manners, part thereof.

EDWARD NOONAN, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. What was your occupation on the 14th day of January?
A. Porter in the St. Charles hotel.
Q. When were you on duty?
A. In the nighttime.
Q. Look at these accused, and state whether or not you saw them on that date.
A. I saw Mr. Kline on that night.
Q. Tell us where you saw him.
A. He was at the cashier's desk.
Q. Which one of the accused is Kline?
A. The stout gentleman.
Q. The stout one?
A. Yes, sir.
Q. Can you tell us what happened after you saw him there?
A. Well, he called for the porter, and the cashier, Mr. Smith, gave me orders to get the baggage down from room No. 859.

Captain HENRIQUEZ:

Q. To get the baggage down from room 859?
A. Yes, sir. I went up to the room, and Mr. Kline went up with me. I took the trunk and brought it down and put it on Mr. Moore's cab, and told him to drive to the I. C. depot; and Mr. Kline and Mr. West got in the cab and went off.

Mr. MOONEY:

Q. Who was occupying room No. 859?
A. Mr. Manners was.
Q. What is that?
A. Mr. Manners, I suppose.
Q. Were Kline and West occupying it, or either of them?
A. I could not say, sir.
Q. When did you first see West?
A. On the sidewalk.
43 Q. Where? On the sidewalk where?
A. By the cab.
Q. On which street?
A. On St. Charles street.
Q. Was it in front of the hotel, or where?
A. He was right in front of the hotel.
Q. In whose cab did they get into?
A. Mr. Moore's cab.

Q. Mr. Moore's cab?
A. Yes, sir.
Q. Did you see any other baggage, except the trunk?
A. Yes, sir, a small grip.
Q. A small grip?
A. Yes, sir.
Q. Could you identify that grip (pointing)?
A. No, sir, I could not.
Q. Then there was a trunk and a grip, as I understand it?
A. Just a trunk in the room; the grip was outside.
Q. Where was the grip?
A. Mr. West had it.
Q. Mr. West had it?
A. Yes, sir.

Captain HENRIQUEZ:

Q. He had it all the time in his hand?
A. At the time I seen him, he had it.

Mr. MOONEY:

Q. Did Kline say anything to you?
A. No, sir.
Q. Did he have any conversation with you?
A. No, sir.
Q. Did he say anything about the trunk?
A. No, sir.
Q. Did he say anything to you at all?
A. Nothing at all to me.

Cross examination by Captain HENRIQUEZ:

Q. Let me see if I understand you. You say one of these parties here, whom you call Kline, you saw standing by the cashier's desk?
A. Yes, sir.
Q. Did the cashier speak to you?
A. Yes, sir.
Q. The cashier said to you "Get the baggage out of room" what number?
A. 859.
Q. 859?
A. Yes, sir.
Q. You went up to room No. 859, and you got the trunk out of room 859?
A. Yes, sir.
Q. Nothing but a trunk?
A. Yes, sir.
44 Q. You got no satchel out of 859?
A. No, sir.

Q. You brought the trunk down?
A. Yes, sir.
Q. And the trunk which you brought down you put on some cab?
A. Yes, sir.
Q. You told the cabman to drive to the Illinois Central?
A. Yes, sir.
Q. No satchels were taken out of that room?
A. I didn't see any.
Q. You went up there?
A. Yes, sir.
Q. Did you take any out?
A. No, sir.
Q. Did this man take any out?
A. I never seen them.
Q. The only man you saw in the hotel was——
A. Kline.
Q. As I understand it, neither Kline nor the other man spoke to you at all?
A. No, sir.
Q. You got your instructions from the cashier?
A. Yes, sir.
Q. You got your instructions to take the trunk out of that room?
A. Yes, sir.
Q. Did you take any jewelry out of that room?
A. No, sir.
Q. Did you see this man take any jewelry out of that room, such as studs, pins, breastpins, lockets, etc.?
A. No, sir.
Q. Diamonds, or anything of that kind?
A. No, sir.
Q. Did you see any travelling case in that room?
A. No, sir.
Q. Did you see any pipe in that room?
A. No, sir.
Q. Did you see any watch fob in that room?
A. No, sir.
Q. Did you see any knife in that room?
A. No, sir.
Q. Did you see any razor case in that room?
A. No, sir.
Q. Did you see a set of studs in that room?
A. No, sir.
Q. Did you see two pearl shirt studs in that room?
A. No, sir.
Q. Did you see fifty pins in that room?
A. No, sir.
Q. Did you see one pearl sleeve link in that room?
A. No, sir.

Q. Did you see a watch ring?
A. No, sir.
Q. Did you see fifty-three scarfpins in that room?
A. No, sir.
Q. Did you see a small silver watch in that room?
A. No, sir.
Q. Did you see a small locket in that room?
A. No, sir.
Q. Did you see two scarf pins in that room?
A. No, sir.
Q. Did you see three studs in that room?
A. No, sir.
45 Q. Did you see one fox's head?
A. No, sir.
Q. Did you see a pair of cuff-links?
A. No, sir.
Q. Cuff-link buttons?
A. No, sir.
Q. Did you see two shirt buttons?
A. No, sir.
Q. Did you see a set of vest buttons?
A. No, sir.
Q. Did you see one set of green stone buttons?
A. No, sir.
Q. Did you see a bag and toilet set?
A. No, sir.
Q. Did you see any of these things I have asked you about?
A. No, sir.
Q. Did you see the man called West, take any of these things from that room?
A. No, sir.
Q. You were there all the time?
A. Yes, sir.
Q. None of these things I have asked you about?
A. No, sir.
Q. Did you see this man West?
A. No, sir.
Q. Was the man Kline there either?
A. Yes, sir.
Q. You never saw these men take any of these things?
A. No, sir.
Q. Did you ever see West at all?
A. I saw him out on the sidewalk
Q. Which one?
A. The slimmer gentleman.
Q. You saw him on the sidewalk?
A. Yes, sir.
Q. He didn't go to the room?
A. No, sir.

Q. Did he go in the room?
A. No, sir.
Q. Did he take anything out of the room?
A. No, sir.
Q. Did the other man take anything out of the room?
A. No, sir; I took the trunk out of the room.

Redirect examination by Mr. MOONEY:

Q. You saw them with the trunk and valise?
A. I seen them with the valise on the sidewalk.
Q. You don't know what was in the valise or satchel?
A. No, sir.
Q. You don't know what was in the trunk?
—. ——.

Re-cross-examination by Captain HENRIQUEZ:

Q. How big was that valise or satchel?
A. It was a small one, about that size (describing with hands size of valise).

46 Captain HENRIQUEZ: Where is that property? Let's have it.
Mr. MOONEY: It is in the clerk's office.

Redirect examination by Mr. MOONEY:

Q. This satchel you speak of, was it one like that? (pointing)
A. No, sir, it was smaller than that.

Cross-examination by Captain HENRIQUEZ:

Q. You say the satchel you saw on the banquette or sidewalk was a smaller one than that?
A. Yes, sir.
Q. It was not this satchel?
A. No, sir.
Q. And no satchel came out of the room, as I understand it?
A. No, sir; I never seen any.
Q. Would you have seen it?
A. Certainly.
Q. You did not see it?
A. No, sir.

ED. MOORE, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. What was your occupation on the 14th of January?
A. I drive a cab.
Q. Where was your cab stationed?
A. Corner of Common and St. Charles street-, near the St. Charles hotel, right at the corner.
Q. Did you see the accused, Kline and West, that night?
A. Not until they came to the coupé.
Q. What time was that?
A. About 10:30.
Q. Well, what happened after they came up?
A. Well, the porter came ahead of these two men with a trunk on his shoulder; he threw the trunk on the coupé, and said "Ned, drive to the Illinois Central depot."

Captain HENRIQUEZ:

Q. What is that?
47 A. The porter came ahead of these two men, with a trunk on his shoulder. He threw the trunk on the coupé, and he said: "Ned, drive to the Illinois Central depot."

Captain HENRIQUEZ: Speak louder.

A. I was standing at the corner of Common and St. Charles streets, and a party came running through the hotel with a trunk on his back, and he threw it on my coupé and he said: "Ned, drive to the Illinois Central depot." That is all; these two men got in, and I drove off.

Mr. MOONEY:

Q. You saw both of them?
A. Yes, sir.
Q. You took them to the Illinois Central depot?
A. Yes, sir.
Q. What baggage did they have?
A. A trunk and a valise.
Q. A trunk and a valise?
A. Yes, sir.
Q. The porter put the trunk on the cab?
A. Yes, sir; he was the one who did all the talking; he is the one who hired me.
Q. He is the one who hired you?
A. Yes, sir.
Q. What sort of a valise was that?
A. Well, it was a small hand valise.
Q. Did they have only one valise?
A. Only one, to my knowledge.

Q. Go ahead, and tell us what happened after you got to the depot.

A. When I got to the depot, I met some people coming out, and they said: "Ned, the train is going;" so when I got there the trunk was taken off, and I left the trunk at the depot. I got paid, and drove off. They asked me how much they owed me; I told them, and I drove off.

Q. Mr. Moore, about this grip. At the time these men were in your cab, on the 14th of January, is your memory clear on that point?

A. Pretty well.

Q. As to the baggage they had?

A. Pretty well, sir, I think.

Q. Are you positive that your recollection serves you now?

A. I know they had a trunk and a valise; I know that because I took the trunk and put the grip on top of the trunk.

Q. Well, are you positive as to the number of grips, or whether there was more than one grip?

A. No, sir, I am not positive about that.

48 Q. You are not positive about that?

A. I had the trunk and one grip on the outside with me.

Q. You testified in the lower court, Mr. Moore, did you not?

A. Yes, sir, I did.

Q. Your memory was fresher at that time?

A. Yes, sir, it was.

Q. Well, as a matter of fact, could it have not been three trunks instead of one?

A. I hardly think that many.

Q. How much did they pay you?

A. One dollar and fifty cents.

Q. When you told them that the train was gone, what did you say?

A. They told me to take the baggage off the coupé.

Q. What else?

A. That they were going to remain here during the night.

Q. Are these the two men?

A. Yes, sir.

Cross examination by Captain HENRIQUEZ:

Q. As I understand you, the porter of the St. Charles hotel put the trunk on the coupé?

A. Yes, sir.

Q. It was a coupé you were driving?

A. Yes, sir.

Q. Who was the porter who put it on?

A. This man who got off the stand.

Q. Mr. Noonan?

A. Yes, sir.

Q. Mr. Noonan was the one?
A. Yes, sir; he was the one that told me to drive.
Q. And this trunk that was put on, was put on by Noonan?
A. Yes, sir.
Q. You say there was one hand satchel?
A. Yes, sir, that I handled.
Q. How big?
A. Pretty good size.
Q. How large?
A. About the size of this.
Q. Was there more than one hand satchel?
A. They may have been taken in the coupé; I did not handle it.
Q. You don't remember three?
A. I hardly think there was; they may have had it in there.
Q. Now, as a fact, did you see more than one?
A. I cannot tell you positively; I know I seen one the size of this.
Q. Will you swear this was the one?
A. No, sir; I cannot swear to that.
Q. Do you know what was in the satchel?
A. No, sir.
49 Q. Did you see these men have any jewelry at all?
A. No, sir.
Q. You drove them to the Illinois Central depot?
A. Yes, sir.
Q. You took the trunk off?
A. Yes, sir.
Q. They paid you one dollar and fifty cents for your services?
A. Yes, sir.
Q. That was for your coupé hire?
A. Yes, sir.
Q. That is all you know about it?
A. Yes, sir.
Q. They did not put the trunk on?
A. The porter put it on and told me where to go.
Q. The porter came from the hotel?
A. Around Common street.
Q. He had it on his shoulder.

Re-direct examination by Mr. MOONEY:

Q. Mr. Moore you were asked about your memory in regard to this grip, do you recollect the testimony you gave in the lower court?

Counsel for the defense objects on the ground that the State is restricted to what is brought out in the examination, and not what was testified to in the lower court.

By the COURT: Your objection is well taken, and I sustain it.

JAMES GILLAN, a witness for the State being first duly sworn did depose and testify as follows:

By Mr. MOONEY:

Q. What is your occupation?
A. Cab driver.
Q. What was your occupation on the 14th of January?
A. Cab driver.
Q. Where was your cab?
A. At the Illinois Central Railroad depot.
Q. Look at the accused at the bar, and state whether you saw them on that date?
A. Yes, sir.
Q. At what hour?
A. About 10:35.
Q. If you were at the Illinois Central depot on that date and had any transaction with them, please state the nature of it?
50 A. Well, Mr. Moore came up there with his cab; I walked out and said, "Ned, the train is gone." The gentleman got out of the cab, and I took the baggage off and brought it towards the baggage room. I only handled one grip; I don't know if they had another grip or not. I brought it over to the depot and sat it down. They asked me if I knew a hotel; I told them about the St. Charles and Grunewald, and they asked me for a place more private. So I recommended 1016 Canal street. I don't remember if that is the number. I brought them there, and took the trunk and grip off and I got one dollar and fifty cents for it; my father came over and called me, and as I didn't have much time to stay I went off.
Q. What baggage did they have?
A. I remember a trunk, a red grip, and a black grip.
Q. What sort of grip was it?
A. Something like that.
Q. You took them to a place on Canal street?
A. Yes, sir.
Q. What time did you get to this place on Canal street?
A. It may have been a quarter to 11. I couldn't recollect the time.
Q. Was that the last time you saw them that night?
A. Yes, sir.
Q. While at the I. C. depot or at any other time did you have any other conversation with them?
A. Yes, sir.
Q. What was it?
A. They wanted to leave town and asked me when the first train left. I told them the first train would leave at 6 o'clock in the morning at the Northeastern. They asked me if they could not leave any sooner. I told them no. But I told them they could get out of town by going to Lee station. They asked me what I would

charge to bring them out there; I said ten dollars. They said it was too much for poor men to pay.

Q. Where did that conversation occur?

A. On Canal street.

Q. You left them by themselves?

A. Yes, sir.

Cross-examination by Capt. HENRIQUES:

Q. You are the one who said the train was gone.

A. Yes, sir.

Q. Was that when Moore drove up?

A. Yes, sir.

Q. Just as he stopped there you remarked the train was gone?

A. The train had just pulled out.

51 Q. Just as he got there?

A. Yes, sir.

Q. You saw the train leave at that hour?

A. Yes, sir, 10:25.

Q. 10:25?

A. Yes, sir.

Q. He got there a little late?

A. Yes, sir.

Q. You took the trunk off of Mr. Moore's hack?

A. Yes, sir.

Q. You took it to the baggage room?

A. Yes, sir, towards the baggage room and set it down on the platform.

Q. How many valises did you have?

A. Two, to my recollection.

Q. Are you positive about that?

A. Yes, sir.

Q. Who had the valises?

A. I handled one; I don't know who handled the other.

Q. Were they both the same size or different sizes?

A. One was a small one and one was a little bigger.

Q. Will you swear it was that one?

A. No, sir.

Q. Which one did you handle?

A. I handled the big red one.

Q. The big one?

A. Yes, sir.

Q. Who had the little one?

A. I don't know.

Q. Then these men got in your cab and you drove off to Canal street?

A. Yes, sir.

Q. They asked you for a place?

A. Yes, sir.

Q. When you got to Canal street they paid you?
A. Yes, sir.
Q. And then they asked you about the trains leaving?
A. Yes, sir.
Q. You told them the earliest train would be in the morning?
A. Yes, sir.
Q. About six o'clock?
A. Yes, sir.
Q. Then you were the man who suggested to go to Lee station
A. Yes, sir, they asked me which was the first train out of——
Q. You told them they could go to Lee station, and they asked you how much it would be and you said ten dollars, and they said it was too much?
A. Yes, sir.
Q. They told you it was too much?
A. Yes, sir.
Q. Where is this place on Canal street?
A. I don't remember the number; it is the Slater house.
52 Q. You left them there?
A. Yes, sir.
Q. Did you leave them on the banquette?
A. I wanted to leave the trunk upstairs; I brought it as far as the door, when my father called me, and I left.
Q. You didn't take it upstairs?
A. No, sir.
Q. You don't know where they went to?
A. No, sir.
Q. You don't know what was in that trunk?
A. No, sir.
Q. Did you see these men have any jewelry?
A. No, sir.
Q. Did you see them have any scarf pins, watches, chains, or anything of that kind?
A. No, sir.

EDWARD W. THOMAS, a witness for the State being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. What was your occupation on the 14th of January?
A. Cab driver.
Q. Look at the accused and state whether you saw them on that date?
—. ——.
Q. Where did you see them?
A. Canal and Rampart.
Q. What hour?
A. Between quarter to 11 and 11:30; I could not state the exact time, but between that time.

Q. First state what occurred there from the time you saw them until you left them.

A. Well, at the time about a quarter to 11 this young man West came to the corner of Canal and Rampart streets, and said to me "Do you run this cab?" I said "I am running one of them." He said "Do you know where any quiet boarding house is in the city?" I said "There is plenty of them." He said "What will you charge to bring me to one of them?" I said One dollar and a half. He said "That is too much," why I can get a cabman for seventy-five cents;" I said All right then. I took him out Canal street four or five squares, and he said "Drive to the other side of Canal street, I have my baggage there." I drove to the other side, the number is 1016 Canal street,
53 and I saw they had three grips and a trunk. I saw three grips; as they put the three grips in the cab I said "I will put them on the front seat." He said "No, I have a trunk." I said "Where is it?" He said "Right up against the wall;" I took the trunk and placed it on the cab. I drove out Canal street between Howard and Villere, and stopped at three places, and asked if they had any rooms. They told me no, they were full. This gentleman here asked me if there was any other. I told him, Yes on Bourbon street. He said "Drive on." I started out Canal street, and he said "Don't drive out Canal, drive a couple of squares down." So I went down Villere to St. Louis and up to Bourbon street. I stopped between Bienville and Conti. I stopped at two places, one of the places I rang the bell and asked if they had any rooms and they told me they were full. I went to the opposite side, but I could get no answer; so I went to Victor's, and this man West goes into Victor's and said they didn't have any rooms. They stayed there a while until the people passed by from the opera; the French opera was leaving out. This man on this side said "Go down to 129 Bourbon street, we can get one there." This heavy man walks down to this place, and the other man gets in the cab, and I drive down there. They carried the grips up there. I carried the trunk upstairs. When I got upstairs I was paid, and drove off.

Q. What sort of grips were they?

A. One of them was shaped into a point at the top, and one of them was a small square grip, something like that one, smaller than that one.

Q. What kind was the other one?

A. I think one of them was a small grip—a little one.

Cross examination by Capt. HENRIQUES:

Q. Where did you say you saw these men that night?

A. Canal and Rampart streets.

Q. That is right on this thoroughfare down here?

A. No, sir, it is right over on the lower side of Rampart street.

Q. That is on this public thoroughfare Canal street?

54 A. Yes, sir.
Q. Hundreds of people walk there?
A. No, sir, not very many people walk there at that hour.
Q. What time was it?
A. Between quarter to 11 and 11:30.
Q. You said the opera and theatres were leaving out.
A. I said the opera was leaving out, but that was on Bourbon street.
Q. Where did you pick them up?
A. Canal and Rampart streets.
Q. They were standing there?
A. No, sir, this man West came from the other side of the street and passed between both cabs; there was two cabs there. He passed between my cab and another horse's head, and I asked him if he wanted a cab and he told me yes.
Q. Then you drove off?
A. We made a bargain before we moved.
Q. Did you make an offer?
A. Yes, sir.
Q. After this you drove off?
A. Yes, sir.
Q. Did you put the trunk on your cab?
A. Yes, sir.
Q. You drove two or three places before they got a room?
A. Yes, sir on Canal street.
Q. That is this same street?
A. Yes, sir.
Q. I suppose there was no one on Canal street?
A. Well, I didn't see any people.
Q. They asked you to get them a place?
A. Yes, sir.
Q. You were the man to select the place?
A. Yes, sir.
Q. You didn't get the place?
A. No, sir.
Q. You drove them where?
A. I drove them up Bourbon street between Bienville and Conti.
Q. What is your name?
A. Thomas.
Q. You say you saw three valises?
A. Yes, sir.
Q. This is another revelation. What kind of valises were they?
A. I remember one of them being a little small grip something like that.
Q. Something like that?
A. Not as big.
Q. What was the other one?
A. It came to a point at the top.
Q. It came to a point at the top?

A. Yes, sir.
Q. Did you see it opened?
A. No, sir.
55 Q. Do you know what was in that valise?
A. No, sir.
Q. Describe the third one.
A. I couldn't describe it; I didn't have that much time. The man grabbed them up in a hurry and threw them inside.
Q. It was that night?
A. Yes, sir.
Q. Where did they get a room at?
A. At the Imperial apartment, right across the cross from the Cosmopolitan on Bourbon street.
Q. It is a very public place?
A. Yes, sir.
Q. Did you go over to Jefferson the next day?
A. Yes, sir.
Q. Who took you over there?
A. Capt. Walshe.
Q. It was for the purpose of identifying some one?
A. Yes, sir.
Q. When you went over there you went over there to identify the men you had driven that night?
A. Yes, sir.
Q. Didn't you point out Mr. Marrero as one of the men you had driven?
A. I cannot remember.
Q. Why can't you remember?
A. I went in two different places where they had jails.
Q. Ain't it a fact when you got over to Jefferson you pointed out Mr. Marrero as one of the people you had driven on that night?
A. I don't remember.
Q. Do you swear you did not?
A. I could not swear, I don't remember.
Q. Will you please call Mr. Fisher?

Mr. FISHER called.

Q. Do you remember seeing that gentleman there?
A. No, sir, there was so many people there I could not say who I saw.
Q. Do you remember that gentleman said to you "You are a damfool, that is Mr. Marrero's son?"
A. No, sir, I don't remember.
Q. Mr. Thomas, can you explain to this jury by any process of reasoning of your own why you cannot remember a fact such as I have stated to you, about identifying some one, when you can remember the size of the valises, and how they opened?
A. I didn't see how they opened.

56 Q. Didn't you say one opened on top?
A. They all opened on top.
Q. Didn't you say one came to a point?
A. Yes, sir.
Q. How is it you can remember all these things, and you cannot remember that you pointed out Mr. Marrero as one of the men you drove that night?
A. Well, I don't remember of pointing Mr. Marrero out. I went in two different jails.
Q. That is the reason you cannot remember?
A. No, sir.
Q. How many places did you go to that night looking for boarding houses?
A. I went to about five places, or perhaps more.
Q. And that didn't confuse you about the description of any valises?
A. No, sir, I saw the grips when they were put in and taken out of the cab.
Q. And you remember what size the grips were; you said one was about that size, only it was red?
A. No, sir, yellow.
Q. And the other one was how big?
A. I could not give a description of how big the other one was.
Q. Haven't you said already it was not quite as big?
A. Yes, sir, I said the yellow grip was not as big as that one.
Q. How big was the third grip?
A. I could not say.
Q. Was there any valise such as that there?
A. I could not say.
Q. You don't know?
A. No, sir.

Capt. R. WALSHE, a witness for the State being first duly sworn did depose and testify as follows:

By Mr. MOONEY:

Q. Captain, in what precinct are you in command?
A. Right at present, the first precinct.
Q. What precinct were you commanding on the 14th of January last?
A. First precinct.
Q. Look at the accused, Kline and West, and state whether
57 or not you have ever seen them before?
A. Yes, sir.
Q. You know the charge against them?
—. ——.
Q. State what you know of the case of your own knowledge?

By Capt. HENRIQUES: I will ask the court to instruct the witness not to say anything that was told him, or anything that any one may have said at the station unless these accused were present.

By the COURT: That is good law. Don't say anything unless it was stated in their presence.

WITNESS:

A. When the robbery was reported to the central station——

By Capt. HENRIQUES: I object to that; I ask that it be stricken out, and the jury be instructed not to regard it.

By the COURT: That is correct. The witness has no right to conclude that any crime has been committed, and you are not to consider it.

Witness continues: Mr. Manners came to the central station and reported that his trunk——

Capt. HENRIQUES: Never mind what Manners said. Unless these men were present anything said by Mr. Manners is not evidence.

DISTRICT ATTORNEY:

Q. Did he make any complaint to you?
A. He complained that his trunk was——

Capt. HENRIQUES: I object. I think you have already ruled on this point.

By the COURT: Your objection is well taken.

Q. You say a complaint was made?
A. Yes, sir.
Q. By whom?
A. By a man by the name of Manners.
Q. Did you know him by any other name?
A. By the name of Kerns.
Q. What did you do after the complaint was made?
A. I immediately put him in Mr. Moore's cab and drove
58 him to No. 129 Bourbon street.
Q. Where was this complaint made?
A. At the chief's office.
Q. Right down here?
A. Yes, sir.
Q. What time was it?
A. It was then about a quarter or ten minutes to twelve o'clock.
Q. Ten minutes to twelve?
A. Yes, sir.
Q. Go right ahead and tell us what you did.
A. I put Mr. Manners, better known as Kerns, into Mr. Moore's cab, and drove him to 129 Bourbon street, and went up stairs and inquired from the clerk if two men had registered there. He told me yes.

Capt. HENRIQUES: Don't say what he said.
By the COURT: Don't make any statement of what was said, unless these parties were present.

Witness continues: I went upstairs, and found in the room in the Imperial hotel a trunk busted open.

Capt. HENRIQUES: I object to witness stating what he found, unless it is connected with these accused.
By the COURT: I will rule unless connected with the accused it is no evidence.

Witness continues: and Mr. Kerns, better known as Manners, identified it as his property and——

Capt. HENRIQUES: Never mind what Kerns said.
By the COURT: I do not think that any statement made by any third party can bind the accused.

DIST. ATTORNEY:

Q. Captain, was the trunk marked in any way?

Capt. HENRIQUES: I object.
By the COURT: I will allow it, but unless it is connected with the accused, I will charge the jury that it is no evidence.

DIST. ATTORNEY:

Q. What sort of trunk was it?
59 A. It was a flat traveling trunk, about that deep and that long.
Q. Was it marked in any way?
A. It had "T. E. M." on it.
Q. What was the condition of the trunk?
A. The lock was "busted" and the effects were scattered all over the room.
Q. Go ahead.
A. The trunk was taken afterwards to the St. Charles hotel by Manners, better known as Kerns.

Capt. HENRIQUES: Were these people there?
WITNESS: No, sir.
Capt. HENRIQUES: Then I object.
By the COURT: I will allow the testimony to go in, but not what Kerns said.
Capt. HENRIQUES: To the ruling of the court counsel for the defense reserves a bill of exceptions.

Mr. MOONEY:

Q. Go ahead Captain.
A. I went over to Gretna the next morning with this man Thomas and saw the accused in the Gretna jail. I was present when West made a statement to Capt. Miller and Fischer. West

said to Capt. Miller that if he put him next to an eight thousand dollar reward, what part of it would he get. Capt. Miller replied that he would give him one quarter, and West objected to it. He said it was not enough. Then he said to Capt. Miller in reply that he would give him one half. He said "This man Manners is coming over here to identify this stolen jewelry. His name is not Manners, his name is Kerns; he is the valet for Mr. Thebaud, the millionaire in New York." That is the whole of the conversation that took place there in my presence.

Q. Were these men placed in your custody?

A. No answer.

Q. Were they turned over to you?

A. Yes, sir.

Q. What did you do with them?

A. I took them over here and locked them up in the Central station.

60 Q. Do you know anything more about the case?

A. No, sir.

Cross examination by Capt. HENRIQUES:

Q. I want to ask you one question before I go any farther. Did you see these men before you saw them in the Gretna jail?

A. No, sir.

Q. You had never seen them before?

A. No, sir.

Q. Had you seen any of this property which they spoke about before you saw it in the Gretna jail?

A. No, sir.

Q. Did you say they said something about some one coming over to identify some property, and he was Thebaud's valet?

A. Yes, sir, I said that he said this man was coming over to identify this stolen jewelry, and that his name was not Manners but Kern.

Q. Did he say "this stolen jewelry"?

A. Yes, sir.

Q. He said that?

A. Yes, sir.

Q. And that his name was not Manners but it was Kerns?

A. Yes, sir.

Q. And that he was Mr. Thebaud's valet?

A. Yes, sir.

Q. Did you see the property over there?

A. No, sir.

Q. You didn't see any property over there?

A. No, sir, not at that time.

Q. Did you see any property over there at all?

A. Yes, sir.

Q. Wasn't that the first time you had seen the property?

A. I had not seen it up to that time, I seen it afterwards.

Q. You testified in the first city criminal court, Capt. Walshe?

A. Yes, sir.

Q. Do you remember stating this, did you see this man Manners that night, and your answer was "Yes," and you were asked "Where did you see him?" and you said "At the chief's office," and you were asked "What did you do after receiving this complaint;" do you remember your answer?

A. I put him in Moore's cab and took him to 129 Bourbon street.

Q. Do you remember this was your answer? "I took him by the arm and thrunned him right back in the same cab he come in and fetched him back to the hotel."

A. I took him by the arm and put him in the cab and drove right off, because I had located the trunks an hour previous to that.
61 He had not learned it was stolen, or I would have had them before they changed so many cabs.

Q. Capt. Walshe, I am holding your testimony that you gave in the first city criminal court on the day this examination took place; I want you to look at this question. Did you say anything to them, meaning the accused, and your answer was "I spoke to them and they declined to answer anything.

—. ——.

Q. Did you swear that in the first city criminal court?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. I heard West say to one of the deputies if he put him next to a big reward what would be the percentage for him and the reply was that he would give him one quarter, and he said he didn't consider that fair, that he would compromise on one half, and he said the man Manners is named Kerns, and when he comes to identify the jewelry his name is Kerns and not Manners, and there is an eight thousand dollars reward for him, is that what you said over there?

A. Yes, sir, that is what I said.

Q. Do you see the words "stolen jewelry" there?

A. Let me read it and see.

Q. Read it over and see if that is not all that you said then?

A. Yes, sir, that is what I said.

Q. Where do you find anything about "stolen"?

(Witness handed testimony to read)

A. Here it is, look; if you have your glasses cleaned you can see it yourself; I will wash them for you; look at it here, "identify the stolen jewelry." He said the man Manners who will come here to identify the stolen jewelry, his name is Kerns, and there is eight thousand dollars reward for him.

Q. I was speaking about this question. I heard West say to one of the deputies if he put him next to a big reward, what would be

the percentage for him, and the reply was that he would give him one quarter, and he said he did not consider that fair, that he would compromise on one half, and he said the man Manners is
62 named Kerns, and when he comes to identify——

WITNESS: *Q.* Oh, Judge he is jumping!

Capt. HENRIQUES: Captain Walshe, I am reading to you from the record, as you see. I spoke to them but they declined to answer anything. I heard West say to one of the deputies if he put him next to a big reward what would be the percentage for him, and the reply was that he would give him one quarter, and he said he did not consider that fair, that he would compromise on half, and he said the man Manners is named Kerns, and when he comes to identify the jewelry, his name is Kerns and not Manners.

(WITNESS:)

A. I will show you, you will see that I said he identified the stolen jewelry.

Capt. HENRIQUES:

Q. Then the court put you this question. What did he say exactly? and you said "He said that the man Manners who will come here to identify the stolen jewelry, his name is Kerns, and there is an eight thousand dollar reward for him. The first time you didn't say anything about 'stolen"?

A. Well, it may have been an error.

Q. You were asked if you knew anything more about this case of your own knowledge to tell it, and your answer was "No, sir."

—. ——.

Q. This property which you said was stolen had you seen it before you saw it over in the Gretna jail?

A. I seen the trunk when——

Q. You saw it in the trunk?

A. I saw the trunk.

Q. Did you see this stolen property which it is said was stolen before you saw it in the Gretna jail?

A. Which part of the stolen property?

Q. The jewelry?

A. No, sir.

Q. The first time you saw it was in the Gretna jail?

A. Yes, sir, in the sheriff's office, not in the jail.

Q. In Gretna?

A. Yes, sir; then I didn't see it; I only saw a portion of it.

63 Mr. H. WATCHAM, a witness for the State being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. What was your business or occupation on the 14th of January?
A. Room clerk of the St. Charles hotel.
Q. What were your duties?
A. Sending people to their rooms.
Q. Can you tell us where a party by the name of Manners was rooming there on that day?

Capt. HENRIQUES: Did you make the entry personally?

WITNESS:

A. I made the entry. On the 14th of January, late—that is on the arrival of the evening train; I have a registration here which is made in front of me, of T. E. Manners.

Capt. HENRIQUES:

Q. You didn't make it?
A. I assigned the room.
Q. The name was signed there by some one?
A. Yes, sir.
Q. Was it signed in your presence?
A. Yes, sir.
Q. Do you remember the fact?
A. Yes, sir.

Mr. MOONEY:

Q. What room was he assigned to?
A. 859.
Q. Will you please tell us whether or not Robert L. West and George I. Kline were guests of the hotel on that date?
A. My records don't show that they were.

Cross examination by Capt. HENRIQUES:

Q. What is the date of that registry?
A. 13th of January.
Q. Do you know anything about the 14th?
A. I don't follow your question.
Q. Do you know what baggage this man Manners had?
A. To the best of my knowledge, he had hand baggage; but, whether he had a trunk at that time, I could not say. In other words, I never saw any trunk.
Q. You never saw any trunk that day?
A. To the best of my knowledge and belief, there was a trunk went up to that room.

64 Q. Who took it up?
A. The porter.
Q. Who is the porter?
A. Well, we have six or seven; I could not tell you which one now; the regular porter at night.
Q. How many trunks went up there?
A. Only one.
Q. Was there any one else occupying this room?
A. There was.
Q. Who was that?
A. A gentleman came to the counter.
Q. Give me the name.
A. T. J. Looney.
Q. A man by the name of Looney also occupied that room?
A. Yes, sir.
Q. Did he have a trunk?
A. I don't believe he had any.
Q. You don't know?
A. Only that he made the remark he was only to stay a day.
Q. I am asking you for facts.
A. No, sir, he would not have a trunk if he was to stay for only one night.
Q. If it should be proven he had a trunk, would you be mistaken?
A. Yes, sir.
Q. Do you mean to say that you can say what quantity of baggage is in the hotel?
A. We are able to do so from practice.
Q. Then you gauge it in that way?
A. Yes, sir.
Q. You could be mistaken?
A. Yes, sir, I could.
Q. What kind of trunk did this man Manners have?
A. I could not tell you, I never saw it.
Q. You don't know as a fact he had one?
A. Except that he gave a receipt or memorandum to the porter to take his baggage up to the room.
Q. Did you see him give that memorandum?
A. I could not swear to that.
Q. Well, if you cannot swear to it you ought not to state it, and I ask that it be stricken out. Did you ever go up to this man's room while this man Manners was there?
A. No, sir.
Q. Did you ever see a trunk of his in that room?
A. No, sir.
Q. Therefore, you cannot tell?
A. No, sir.
Q. Do you know how many people Manners took up to his room during the time he was there?

A. No, sir, I do not.

65 Q. Do you know whether he authorized any person to take his trunk away?

A. No, sir.

Q. If he had a trunk?

A. I don't know.

Q. Were you on duty on the night of the 14th?

A. No, sir.

Re-direct examination:

Q. How long was Manners there?

A. I cannot answer that; I will have to look at the records.

Re-cross examination:

Q. Could you not tell what room Manners occupied?

A. Yes, sir.

Q. Could you?

A. Yes, sir.

Q. Then why did you want to look at the book?

A. Because in front of me I see another signature. I wish to explain; two men came to the counter at the same time, supposedly from the train, and I explained to them that I could not give them a separate room—that I would have to give them a room with two beds in it; that is why I remember it.

Q. That is the way you remember it?

A. Yes, sir.

Q. If you did not have the book you could not remember it?

A. I could remember that another person was put in his room.

Q. That man's name is Looney?

A. Yes, sir.

Q. Where is he?

A. I could not say.

Q. When did he leave?

A. The next day.

Q. The fifteenth?

A. The fourteenth.

Q. Did he leave in the morning or in the evening?

A. I could not say; I was not on duty in the morning.

Q. Did he leave at night?

A. I was not on duty.

Q. Do you know when he left?

A. No, sir; he left sometime during the day; I was not on duty.

Q. You just know that because some one told you?

A. I know it from seeing the entry.

Q. Do you know who made the entry?

A. The clerk who is opposite to me.

Re-direct examination:

Q. Where was this man Looney registered from?
A. Lexington, Kentucky.

66 Capt. HENRIQUES: If you are speaking from the register and you don't know it as a fact, you cannot state it?

WITNESS:

A. I am simply speaking according to the registry. He was a stranger to me.
Q. Do you know where he came from?
A. He was a perfect stranger to me.
Q. He may have come with this man from Chicago?
A. Or from California, or some other place; I don't know.

ED. W. THOMAS, being recalled for the State did testify as follows:

By Mr. MOONEY:

Q. You said something about taking a trunk to 129 Bourbon street at the time you took these accused there?
A. Yes, sir.
Q. Do you remember what sort of a trunk it was?
A. Yes, sir.
Q. Did you see this trunk again that night?
A. Yes, sir.
Q. When?
A. Well, it was about fifteen minutes after I left the men there.
Q. Who was with you then?
A. It was Capt. Walshe.

Capt. HENRIQUES: I object, if your honor please; we are not charged with stealing a trunk.

The COURT: I will allow the question. Counsel for these accused object to the evidence because it is foreign to the charge contained in the information; that the accused are not charged with stealing a trunk, and any evidence admitted on that score may have a tendency to prejudice the jury against these accused. Bill reserved.

(Witness continues:) I went up in the room with Capt.
67 Walshe and a corporal of the third precinct; we went up in the room and saw the trunk "busted" open, and also Mr. Moore. The trunk was broken open; there was a couple of shoes and some——

Capt. HENRIQUES: I object, if your honor please, and ask that the jury be instructed not to consider it.

By the COURT: Your objection is well taken. Gentlemen of the jury you are not to consider that testimony.

Q. Did you see this man Manners there?
*A. Did you see this man Manners there?*
A. Yes, sir, I saw him there.
Q. This trunk you speak of was that the same one you took up there?
A. Yes, sir.
Q. What became of the trunk?
A. The trunk was taken back to the St. Charles hotel.
Q. Is the trunk here?
A. No, sir.
Q. Did you help take it up stairs?
A. No, sir, Mr. Moore and some one else took the trunk down.

AUG. PUREDIN, a witness for the State being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. What was your occupation on the 14th of January?
A. Night clerk, Imperial.
Q. Where is that located?
A. 126 Bourbon street.
Q. Look at these two accused and state whether you saw them.
A. Yes, sir.
Q. Where?
A. At the hotel.
Q. What time?
A. About twenty minutes to 12.
Q. Did they register at your place?
A. Yes, sir.
Q. Under what name?
A. W. L. Marsh and H. E. Howe.
68 Q. You are sure these are the men?
A. Yes, sir; the man named West registered for him and his friend. He registered the two names.
Q. What are their names?
A. I can remember their names, but not the initials.
Capt. HENRIQUES: Is that their writing?
A. I got it from the register.

Mr. MOONEY:

Q. You say you can remember the names but not the initials, W. A. Marsh and H. E. Howe.
A. Yes, sir.
Q. Did you have any conversation with them?
A. Yes, sir, with the man named West. He asked me if he could secure a room for that night. He said "I have a friend and a lot of baggage down stairs (or there.) I will register and get my friend." He came up with his friend and baggage, and I showed him to room 12. The baggage was one trunk and three valises.

Capt. HENRIQUES: How many valises?
WITNESS: Three valises.

(Witness continues:) After I got upstairs, the only conversation that I had with Mr. Kline, which I forgot to say just now, I did speak to him. He asked me for a pitcher of ice water. Those were the only words I exchanged with Mr. Kline. After they were brought to the room Mr. West came down and asked me if I had any loose keys, any loose trunk keys. I told him no. He then said "Lend me a hammer." I could not secure one so I handed him a monkey wrench. The two gentlemen were in the room together. We heard a lot of knocking, but paid no attention to it. About twenty minutes after they were in the room Mr. Kline came down with two valises. As he got down to the foot of the stairs from the third floor, I asked him if he intended to keep the room for the night; he said "Well, we will go out and be back." I told him I had a good many people that I could put in the room, and I asked him if he would pay me then; he said "Certainly, I will pay you,"
69 and both of them went down, Mr. Kline carrying two valises and Mr. West one. This was twenty minutes after they had registered; about five minutes after one Mr. West returned with Mr. Kline, and he went upstairs to his room and remained there five minutes, and then he came back and asked where he could get his throat wet; I understood him to mean a drink so I directed him to the corner bar-room. I didn't see any more of him after that. Ten minutes after that Capt. Walshe and a man that was called Kern, and I presume the News reporter——

Capt. HENRIQUES: Don't presume.

A. (Witness continues:) I was told afterwards he was a News reporter; they came up and asked me if two gentlemen had registered; I said yes, and they asked me if they had any baggage; I said yes, and described it, and Capt. Walshe asked me to give him the key to go up to the room; I said "I haven't any key." He said "I will have to break the door open——"

Capt. HENRIQUES: Anything Capt. Walshe said to you is not evidence.

A. Nevertheless, the officer and Mr. Kern and myself went up to the room, and we found the trunk up there.
Q. What about the door?
A. The door was unlocked.
Q. The doors were unlocked when you went up there?
A. Yes, sir.
Q. Did they tell you what they wanted with the hammer?
A. They said they wanted to open their trunk, as they had lost their trunk keys.

Cross-examination—Capt. HENRIQUES:

Q. That is all they said to you?
A. Yes, sir.
Q. They came in with three valises?
A. Yes, sir.
Q. What kind of valises?
A. They were on that order. I could not describe the sizes.
Q. Were there any hand satchels?
A. Well, they were all hand satchels.
Q. What do you call hand satchels?
A. I would call a hand satchel like that.
Q. Were they all the same?
A. Well, they all looked about alike; I never paid any particular attention to them.
70 Q. Were they all of the same color?
A. Yes, sir.
Q. Did you examine about that?
A. Well, now, I did not pay any particular attention. All I know is they were about alike.
Q. Did you see they were all of the same color?
A. They were all yellow valises, in other words, tan.
Q. All yellow tan?
A. Yes, sir.
Q. This is not a tan?
A. I would call this a tan valise.
Q. They were all this color?
A. Yes, sir.
Q. The three valises were all of this color?
A. Yes, sir.
Q. You are not mistaken?
A. No, sir, I don't think I am.
Q. Were they all the same size?
A. I would not like to say that—that is another thing. I didn't pay that much attention to the sizes.

WILLIAM KUNDERTT, a witness for the State being first duly sworn did depose as follows:

By Mr. MOONEY:

Q. What was your occupation on the 14th of January?
A. Paper carrier.
Q. Look at the accused here and tell us whether or not you saw them on that day.
A. Yes, sir.
Q. What time did you see them?
A. Twenty minutes past five.
Q. Where were they?
A. Coming from around the ferry house.

Q. Tell us what you know about this case?

A. It was about twenty minutes past five; I was standing in front of the ferry house; I saw a colored man carrying three satchels about that size followed by two white men——

Q. Who are those two white men?

A. Those two. I told the police about it, and we went up to Mrs. Smith and arrested Mr. West. When I was carrying the
71 valises to the police station, I saw Mr. Kline standing right opposite the police station, and he started to walk towards the depot. I drove my jumper up and followed him. He went to walk fast, and I went for an officer, and I saw Mr. Fischer coming, so I brought him down in my jumper, and we follow Mr. Kline, and Mr. Fischer gets out of my jumper and went after him.

Q. Which way had he gone?

A. Toward the woods.

Q. Is that towards the depot, or away from it?

A. He started towards the depot, and went towards the woods.

Q. It was after West was arrested?

A. Yes, sir.

Q. Go ahead.

A. Then we arrested Mr. Kline and brought the valises to the police station.

Q. What sort of valises were they?

A. The other two valises were about this size.

Q. They had three valises?

A. This is one of them.

Q. Take a good look at it.

A. I know the valise.

Q. You are sure that is one of them?

A. Yes, sir.

Q. Where did you first see it?

A. At Mrs. Smith's barroom, I saw it at the ferry at first.

Q. Where was West standing at the time he was arrested?

A. Right inside the barroom; the door was closed

Q. Where was the valise?

A. Standing right down alongside of him.

Q. Who arrested him?

A. Mr. Fischer and Mr. Miller.

Q. Did West make any statement?

A. No, sir.

Q. Did he say anything about the valises?

A. No, sir.

Q. You carried the valises to the station?

A. Yes, sir.

Q. Did you turn them over to anyone?

A. I just put them in the police station; the police opened them, I believe.

Q. In the police station?

A. Yes, sir.

Q. You are sure this is one of the valises?
A. Yes, sir.

Cross examination by Captain HENRIQUEZ:

Q. First of all, you saw a colored man?
A. Yes, sir.
Q. Carrying three valises?
A. Yes, sir.
72 Q. Who was he?
A. A rope tier on the night tow.
Q. Is he here?
A. He works on the night ferry; he is not here now.
Q. Is he on the police force?
A. No, sir, he works on the ferry; he is a fireman.
Q. He was carrying three valises?
A. Yes, sir.
Q. Where was he when you saw him?
A. Coming around from the ferry house.
Q. Was he in Gretna?
A. Yes, sir.
Q. Over in Gretna?
A. Yes, sir.
Q. Now, let me see if I understand you; the first thing you saw was a colored man, carrying three valises, and these two accused walking behind him?
A. Yes, sir.
Q. It was over in Gretna?
A. Yes, sir.
Q. It was not in the parish of Orleans?
A. No, sir.
Q. You didn't see them carrying any?
A. No, sir.
Q. You say the man was carrying them?
A. Yes, sir.
Q. These two men were walking behind?
A. Yes, sir.
Q. The next time you saw them was at Mr. Smith's?
A. Yes, sir, one of the men, Mr. West.
Q. He was in Mrs. Smith's barroom?
A. Yes, sir.
Q. What was he doing there?
A. Standing up, looking through the glass; the door was closed, and he was looking through the glass.
Q. That is all he was doing?
A. Yes, sir.
Q. Did he have his hand on the valise?
A. No, sir; it was right in front of him; he was on this side, and the valises were there.

Q. You had him arrested?
A. I didn't have him arrested; the officers arrested him.
Q. Who arrested him?
A. Mr. Miller, chief of police, and the sergeant.
Q. He was standing in this barroom, West, and the valise was sitting on the floor?
A. Yes, sir.
Q. Was that the same valise that that colored man was carrying?
A. Yes, sir.
Q. Will you swear to it?
A. I cannot positively swear that they were the same valises, but they were just that size.
Q. You didn't see this man—I mean, these men—carrying any valises?
73 A. No, sir.
Q. And you say it was in Gretna?
A. Yes, sir.
Q. It was not in the parish of Orleans?
A. No, sir.
Q. Is that right?
A. Yes, sir.
Q. It was in Gretna?
A. Yes, sir.
Q. That is the parish of Jefferson?
A. Yes, sir.
Q. And your name is what?
A. Kundert.

Sergeant FISHER, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. Mr. Fisher, what was your occupation on the 14th of January last?
A. Sergeant on the police of Jefferson parish.
Q. Where were you located, in what part of the parish?
A. In Gretna.
Q. Will you look at these accused, and state whether or not you saw them on that day?
A. Yes, sir.
Q. Where did you see them?
A. In Gretna.
Q. Did you arrest either of them?
A. Yes, sir.
Q. Which one?
A. Both.
Q. Where did you arrest them?
A. One of the men, I think they call West, I arrested in the saloon.

Q. The big man, not quite to the end?
A. Yes, sir.
Q. At what time, about?
A. Half-past eight in the morning, on the 15th of January.
Q. The morning of January 15th?
A. Yes, sir.
Q. Did he have anything with him at the time you placed him under arrest?
A. Any baggage? No, sir, nothing with him then.
Q. Where did you arrest him?
A. Right in the saloon, by the bar.
74 Q. When you say he had nothing with him, what do you mean?
A. Well, he didn't have it in his hand.
Q. He didn't have it in his hand?
A. No, sir, four feet from him.
Q. What?
A. Two valises.
Q. What kind of valises?
A. Something on that style.
Q. Did he tell you, who these valises were?
A. No, sir.
Q. Did he tell you anything about it?
A. No, sir.
Q. Are you certain on this point?
A. No, sir.
Q. What became of the valises?
A. I took them up.
Q. What did you do with them?
A. I put them in the paper boy's jumper.
Q. Mr. Kundert's jumper?
A. Yes, sir.
Q. Where were they taken to?
A. Taken down as far as the police station, and then from there they were taken as far as the Morgan depot, and thrown on the sidewalk.
Q. The valises were?
A. Yes, sir.
Q. Go ahead. What was done with them after then?
A. I told Kundert he ought not to throw them on the sidewalk.
Q. I want to try and trace these valises and baggage.
A. I gave them to Kundert, myself.
Q. Do you know where he took them to?
A. To the police station, but not right away.
Q. You saw them in the police station?
A. Yes, sir, a short while afterwards.
Q. Go ahead and tell us about the other arrest.
A. Well, I arrested the other man.
Q. Where did you catch him?

A. Right back of Gretna.
Q. What do you mean by that?
A. Right in the rear of the town.
Q. What was he doing at the time you placed him under arrest?
A. He was walking.
Q. Which way?
A. Towards what they call the protection levee.
Q. Towards the protection levee?
A. Yes, sir.
Q. Was he walking towards Gretna, or away?
A. He was walking away from Gretna.

75 Cross examination by Capt. HENRIQUES:

Q. When you say you saw West, which is West?
A. The tall slim gentleman.
Q. He was standing where?
A. In Mrs. Smith's saloon.
Q. You say the valise was about four feet from him?
A. Yes, sir.
Q. You never saw him bring them there?
A. I did not.
Q. Then you arrested him?
A. Yes, sir.
Q. Because of something some one told you?
A. Yes, sir, on suspicion.
Q. You took him and the valise to the station?
A. Yes, sir.
Q. And afterwards arrested Kline?
A. Yes, sir.
Q. Were you there when this man Thomas, the cab driver, was there?
A. Yes, sir.
Q. You remember Thomas the cab driver?
A. Yes, sir.
Q. Were you there when he came to the station?
A. Yes, sir.
Q. Do you remember what he came over there for?
A. He came to identify this man on this side, Kline.
Q. Do you remember him having identified any one else?
A. Yes, sir, he identified Marrerro's son.
Q. Did he say that was one of the men?
A. Yes, sir, and I told him he was a damn fool.
Q. That is a fact?
A. Yes, sir.
Q. He didn't know the man?
A. The man was right in the room at the same time.
Q. And he picked out Marrerro's son?
A. Yes, sir, Leon Marrerro.

Mrs. JOHN SMITH, a witness for the State, being first duly sworn, did depose and testify as follows:

Mr. MOONEY:

Q. Where do you live?
A. Gretna.
Q. What is your occupation?
A. On Front street.
Q. You live on Front street?
A. Yes, sir.
Q. Have you a place of business there?
A. Yes, sir.
76 Q. Did you ever see this accused?
A. Yes, sir.
Q. When?
A. On the 15th of January.
Q. What time?
A. About twenty minutes after five.
Q. Did they come to your place?
A. Yes, sir.
Q. Twenty minutes past five when?
A. In the morning.
Q. What did they do after they came to your place?
A. They asked for a room.
Q. Did you give them a room?
A. Yes, sir.
Q. Did they have any baggage with them?
A. They had three hand grips and a little satchel.
Q. Did they take this baggage to their room?
A. Yes, sir.
Q. Would you recognize any of these satchels?
A. I think I can, I don't know; two of them were one color, and one was a lighter tan color; one was a little brighter than the other two.
Q. Look at that?
A. Something like that. One was a brighter color.
Q. Who took their valises in their rooms?
A. West.
Q. West?
A. Yes, sir.

Cross-examination by Capt. HENRIQUES:

Q. They asked you for a room?
A. Yes, sir.
Q. They went up to their room?
A. Yes, sir.
Q. How long did they stay there?
A. About three quarters of an hour.

Q. They came down again?
A. Yes, sir.
Q. They brought the valises down?
A. Yes, sir.
Q. They put them down before every one?
A. There was not any one there at the time.
Q. Your place is a public place?
A. Yes, sir.
Q. Any one can go in there that wants to?
A. Yes, sir.
Q. Is it a grocery and bar-room?
A. Saloon and boarding house.
Q. You have boarders?
A. Yes, sir.
Q. They come in and put up there?
A. Yes, sir.
Q. People come in and out to take drinks?
A. Yes, sir.
Q. Do you keep any bar-keeper?
A. No, sir.
Q. Is your husband alive?
A. Yes, sir.
77 Q. Was he there?
A. Yes, sir.
Q. This was done before all you people?
A. Yes, sir.
Q. This was over in Jefferson?
A. Yes, sir, Jefferson parish.
Q. In the town of Gretna?
A. Yes, sir.
Q. Not in the parish of Orleans?
A. No, sir.

Captain MILLER, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. Did you hold any office in the parish of Jefferson on the 14th or 15th of January?
A. Yes, sir, captain of police.
Q. Captain of police?
A. Yes, sir.
Q. Look at these accused here, and state whether or not you saw them?
A. Yes, sir.
Q. When?
A. On the 14th or 15th of January; I don't exactly remember.

Captain HENRIQUES: It was the 15th.

Q. What time was it?
A. About 8:30.
Q. Where did you see them?
A. In Mr. Smith's bar-room; I didn't see the other.
Q. Which one?
A. West.
Q. Did you arrest either of them that day?
A. Yes, sir.
Q. Which one?
A. West.
Q. Who was with you at the time you arrested him?
A. Mr. Fischer and Mr. Kundert.
Q. Did they have any baggage with them?
A. They had three satchels.
Q. What kind of satchels?
A. Colored satchels.
Q. Could you recognize the satchels?
A. Something like this one; I could not swear positively it is the same one.
Q. What did you do with the grips?
A. I took them to the police station.
Q. What did you do with them after that?
A. I turned them over to Mr. Marrerro.
Q. Which one?
A. Mr. Marrerro, the sheriff.
78 Q. Which?
A. Old man Marrerro, L. H. Marrerro.
Q. Where did you see Kline? Did you see him that day?
A. Yes, sir. Mr. Fischer had arrested him while I was going to jail with Mr. West. Fischer went to get him.
Q. What time did he bring Kline to jail?
A. About a half an hour or quarter of an hour.

Cross examination by Capt. HENRIQUES:

Q. I understood you to say that you arrested West?
A. Yes, sir.
Q. You arrested West in Mr. Smith's bar-room?
A. Yes, sir.
Q. Over in the parish of Jefferson?
A. Yes, sir.
Q. In the town of Gretna?
A. Yes, sir.
Q. It was about eight o'clock in the morning?
A. Yes, sir, or eight thirty.
Q. About that time?
A. Yes, sir.
Q. You took him to jail?
A. Yes, sir.

Q. And then the other man Kline was arrested by the sergeant?
A. Yes, sir, Sergeant Fischer.
Q. Were you present when this man Thomas came in to identify any one?
A. Yes, sir.
Q. Do you remember Thomas?
A. Yes, sir.
Q. Do you remember his identifying Mr. Marrerro as one of the people he had driven that night?
A. Yes, sir.
Q. You are positive?
A. Yes, sir.

LEON MARRERRO, a witness for the State, being first duly sworn, did depose and testify as follows:

Mr. MOONEY:

Q. What is your occupation?
A. Deputy sheriff for the parish of Jefferson.
Q. That was your position on the 15th of January?
A. Yes, sir.
Q. Will you look at the accused and state whether or not you saw the accused on that day?
A. Yes, sir.
79 Q. What day was it?
A. On the 15th.
Q. At what time?
A. About half past nine in the morning.
Q. Where were they?
A. One was in the police station, and the other one was in the parish prison, parish of Jefferson.
Q. Was there any property turned over to you?
A. Yes, sir, three satchels turned over to me by the chief of police.
Q. What kind of satchels were they?
A. Hand satchels.
Q. Is that one of them?
A. Well, I could not say positively that is the satchel, but it looks like one of them.
Q. It looks like one of them?
A. Yes, sir.
Q. What did you do with this property?
A. I locked it up in the safe until it was turned over to Capt. Walshe. I think it was Capt. Walshe and a couple of detectives over there, whom we turned over Kline and West to.
Q. What did you do with the three satchels?
A. I kept them in the safe.
Q. Why did you keep it in the safe?
A. It was the satchel that contained the jewelry.

Q. Did you see the jewelry?
A. Yes, sir, I did.
Q. Would you recognize the jewelry if you saw it again?
A. Yes, sir.
Q. Do you know what it consisted of?
A. Yes, sir.
Q. Just examine that, and state whether or not that is the jewelry you speak of. (Witness shown jewelry.)
A. Yes, sir, that is the jewelry.
Q. Mention what that package contains.
A. That package contains pins with stones, diamonds, and a small watch, and another small watch was also found in the satchel. This package here contains ring with watch inside of it; fob and watch charm was also in this one; as a whole, I will say this is the stuff.
Q. That is all you can identify?
A. Yes, sir.
Q. What did you do with the satchel containing the jewelry?
A. I kept it in the safe until my father, the sheriff, asked for it.
Q. Did you give it to him?
A. I turned it over to him.
Q. Is that the jewelry you turned over to him?
A. It is.

80 Cross-examination by Capt. HENRIQUES:

Q. As a deputy sheriff of the parish you received this valise?
A. Yes, sir.
Q. Who gave it to you?
A. The chief of police.
Q. And you took that one valise which you think looked like that, and locked it up in the safe?
A. I did.
Q. Subsequently, you turned it over to your father?
A. Yes, sir.
Q. You were not there when the property was found or taken possession of by the chief of police or sergeant?
A. No, sir.
Q. Do you know anything about it?
A. No, sir, only from hearsay.
Q. Do you remember the morning when Capt. Walshe came over there with some people, and among them was a man by the nam of Thomas?
A. I remember his face; I never saw him before.
Q. The man I point out to you?
A. Yes, sir.
Q. Do you remember his identifying you as one of the people he had driven?
A. Well, I was in the room, one of the rooms of the parish prison, with West, Manners, and the detective for the St. Charles hotel and

we were questioning Kline, and the door suddenly opened in the rear of me, and before I could look around to see who it was coming in, I saw Capt. Walshe and this cab driver, Joe Fischer, Sergt. Fischer, and our jailer walk in, and the cab driver pointed to me, and said "He is the one."

Q. He pointed you out and said "He is the one"?

A. I did not at the time realize what he was doing, but Fischer got hold of his arm and said "You dam- fool." I paid no more attention to it.

Q. That did really happen?

A. Yes, sir, that really happened.

Sheriff MARRERRO, a witness for the State, being first duly sworn, did depose and testify as follows:

By Mr. MOONEY:

Q. Do you hold any office in this State?

A. Yes, sir.

81 Q. What is it?

A. Sheriff for the parish of Jefferson.

Q. Were you sheriff of the parish of Jefferson on the 15th of January?

A. Yes, sir.

Q. Did you see these accused on that day?

A. Yes, sir, I seen them; in the police jail in Gretna.

Q. About 11 o'clock I think, or later than that.

Capt. HENRIQUES: About that time.

A. I don't think I seen them any later than two or one o'clock.

By Mr. MOONEY:

Q. Was there any property turned over to you?

A. Yes, sir.

Q. What was it?

A. A satchel and a lot of jewelry.

Q. Who turned it over to you?

A. Well, it was brought in by Capt. Walshe and turned over to me.

Q. What was done with the jewelry?

A. I locked it up in the safe and kept it until it was turned over.

Q. Look at this grip and the jewelry and state whether it is the property?

A. Yes, sir, that is the property; I turned it over and got a receipt.

Q. To whom did you turn it over?

A. I turned it over to Sergeant Kelley of New York city.

Q. Where was that?

A. I turned it over here in the court.
Q. The first city criminal court?
A. Yes, sir.
Q. At what time?
A. It was on Saturday, after the arrest, some four days after the arrest.
Q. Why did you bring it there?
A. I was requested by Mr. Thebaud to bring Kern over, the prisoner, and the jewelry, and I was prepared to turn the prisoner and the jewelry over to the detective, and I told him I would bring him over, and I did bring him over.
Q. Was there any examination had in the court that day?
A. Yes, sir.
Q. Did you deliver this property over in court?
A. No, sir, I delivered this property to Sergeant Kelley of New York, and got a receipt from him.
Q. Was it identified that day in court?
A. Yes, sir.

82 Capt. HENRIQUES: I object to this question.
The COURT: I will allow it.
Capt. HENRIQUES: Bill of exceptions reserved.

Q. How long have you lived in Gretna, Mr. Marrerro?
A. I don't live in Gretna.
Q. Do you know a great deal of Gretna?
A. I have lived in Jefferson parish over twenty years, since 1881.
Q. You have been sheriff there for a number of years?
A. About six years.
Q. How many railroads pass through Gretna?
A. Well, there is two railroads.
Q. What are they?
A. The Southern Pacific and the Texas Pacific.
Q. What time does the morning train pass through?
A. The Texas and Pacific before 8:50, and the Southern Pacific, I think about half past ten.

Cross examination by Capt. HENRIQUES:

Q. All that you know is that you turned the valise over containing some jewelry?
A. Yes, sir, I came down to my office; I was told that the effects were at the police station; I told my son to send word to the captain to bring them down, and he brought them down, and I turned them over.
Q. You were asked by the district attorney if that property was identified in the other court?
A. Yes, sir, it was.
Q. Who identified it?
A. Mr. Thebaud.

Q. He identified it as being the property stolen from him in New York?
A. Yes, sir, he did.
Q. He identified it as being the property stolen from him in New York by a man by the name of Kerns?
A. Yes, sir.
Q. Did you have Kerns under arrest?
A. Yes, sir.
Q. The man he identified as having stolen this property?
A. Yes, sir.
Q. I understood you to say you got a receipt from Mr. Kelly?
A. Yes.
Q. Who was Kelley?
A. A sergeant of the New York detective force.
Q. Did you also get a receipt from him for Kerns?
A. Yes, sir.
Q. You turned over both the property and Kerns to Kelley?
A. Yes, sir.

83 Capt. HENRIQUES: I want to offer in evidence the affidavit made against this man Kerns, alias Manners; I want to show that he was turned over to John F. Kelley, representing the police force of New York.

I desire to offer in evidence the affidavit, together with the endorsement thereon, in the case of The State of Louisiana *vs.* Edward Kern, Jr., alias T. E. Manners.

Affidavit read to the jury.

I propose at this time to read to you the following receipt:

"NEW ORLEANS, *January 25th*, 1902.

Received from first city criminal court the body of one Edward Kern, alias T. E. Manners, wanted as a fugitive from justice from the city of New York.

(Signed) JOHN F. KELLEY."

We also offer the testimony of Sergeant John F. Kelley of New York in evidence. (Sergeant Kelley's testimony read to the jury.)

GEORGE I. KLINE, a witness for the defense, in his own behalf, did testify as follows:

Q. Mr. Kline, did you know this man who gave his name as Manners?
A. Yes, sir.
Q. Where did you become acquainted with him?
A. I met him at the race track.
Q. Did you ever meet him before that?
A. Yes, sir.
Q. Where did you meet him?

A. In Chicago.
Q. Did you have any conversation with him at the race track?
A. Yes, sir.
Q. How did they come about?
A. He asked me for a match to light a cigarette.
Q. Did he come up to you?
A. Yes, sir, we were standing close up to each other and he addressed me.
84 Q. What did he say?
A. He said "Will you let me have a match to light a cigarette."
Q. What did you say?
A. I gave him the match.
Q. Then what happened?
A. He told me he had come down here and was playing the races and was broke—that he was in hard luck, and he told me he was staying at the St. Charles hotel, and he asked me if I could not go there with him and pay his bill and get his things.
Q. Did you go there?
A. Yes, sir.
Q. Did you pay his bill?
A. Yes, sir.
Q. Did you ever go to his room with him?
A. Yes, sir.
Q. Who took you there?
A. He did.
Q. Did he point out the things he wanted you to take?
A. Yes, sir.
Q. Is that the reason you took them?
A. Yes, sir.
Q. Because he authorized you to do it?
A. Yes, sir.

Cross-examination by Mr. MOONEY:

Q. Where were you to take those things?
A. I was to take the things and meet him at the depot.
Q. What depot?
A. The I. C. I believe they call it the Valley.
Q. At what time?
A. He told me to meet him and take the 10:45, but the train left at 10:25.
Q. What did you do then?

Capt. HENRIQUES: I object.
By the COURT: I will allow the question.
Capt. HENRIQUES: Bill of exceptions reserved.

(Witness continues:) After he told me to take the things to the depot why I went to the hotel and paid the bill.

Q. After you got to the depot what did you do?
A. Well, I took the cab and left the depot.
Q. Where did you go?
A. Where did I go to? Well, I went to, I don't know; I went with the cab I don't know where it was. I think it was on Canal street.
Q. What cabman was it?
A. I don't know his name; I know it was the third cabman who took us that night; I know it was not Mr. Moore, and I know it was not Mr. Thomas.
85 Q. It was Mr. Gillan?
A. It was not the first or last one; it was the second one.
Q. Where did he take you?
A. He took us, I think to Canal street.
Q. Were you looking for Manners or Kerns?
A. No, sir.
Q. You were not?
A. No, sir.
Q. Weren't you going to meet him at the depot?
A. Yes, sir; we were to take that train and go on to Atlanta; he was to meet us in Atlanta. He would come on to Atlanta; we were to go to Atlanta.
Q. You were to go to Atlanta?
A. Yes, sir.
Q. When?
A. On the first train, on that train, but we did not catch it.
Q. Does that train go to Atlanta?
A. Well, it would go towards Atlanta. It goes away from here; if we had caught that train we could probably have connected for Atlanta.
Q. Do you know which road is a direct road from here to Atlanta?

Capt. HENRIQUES: I don't think this grows out of the direct examination, and we object.
By the COURT: I maintain your objection.

Q. When did you enter into this agreement to meet him in Atlanta?
A. Well, he told us at the race track to go with him to his room, and meet him in his room at the St. Charles hotel.
Q. Well, where was this agreement entered into?
A. In his room at the St. Charles hotel.
Q. He pointed out to you what baggage you were to take?
A. Yes, sir.
Q. What baggage was that?
A. It was one trunk, and one valise; he turned the valise over to us.
Q. What has become of the trunk?
A. Well, the trunk—you know what has become of the trunk.

Q. Is that correct?
A. No, sir, not all of it.
Q. What became of the keys?
A. Well, the trunk —we went and paid the bill as instructed by him, and told the cashier to get the baggage down, as we were ordered by one Kern.
Q. You got the trunk?
A. Yes, sir, delivered it to the cabman.
86 Q. What became of it?
A. It was given to the cabman, and the cabman took it to the Illinois Central or Valley depot.
Q. And then?
A. It was taken to Canal street.
Q. And then?
A. From Canal street it was taken to some lodging house; I believe they call it the Imperial. I don't know whether it was or not. I believe it was the place.
Q. And then?
A. And there it was opened.
Q. You know it was opened?
A. Yes, sir.
Q. You opened it?
A. Yes, sir.
Q. Who opened it?
A. Mr. West and myself.
Q. How did you open it?
A. We opened it with some tool we borrowed from the hotel.
Q. Why did you not unlock it?
A. We didn't have the key; we told them we had keys we thought would unlock the case.
Q. What was the object in opening the trunk?
A. To get the contents
Q. Did you know what was in the trunk?
A. No, sir, only what he had said.
Q. What had he said?
A. He said it was some things he told us to get.
Q. What did he say?
A. What did he say?
Q. Yes, sir.
A. He said he had some jewelry and collateral.
Q. Did you find any jewelry in the trunk?
A. No, sir.
Q. You say you were asked to meet him in Atlanta?
A. Yes, sir.
Q. Why?

Capt. Henriques objects to question on the ground it was not brought out on direct examination and has nothing to do with the case.

COURT: Your objection is sustained.

Mr. MOONEY:

Q. Did you have any conversation with this second cabman?

Capt. Henriques objects.

By COURT: I think that the question is connected and I will allow it.

87 Capt. HENRIQUES: I desire to reserve a bill of exceptions to your honor's ruling.

Q. Did you have any conversation with this second cabman?

A. Yes, sir; afterwards I have had with one or two of the cabmen.

Q. I am speaking about the second cabman: do you remember him as the first. I speak of him as the second cabman; I believe there was three of them.

A. I asked one of the cabmen for a boarding house; I don't know whether it was the second or third one; it was not the first one.

Q. Did he take you to any boarding house?

A. He took us to where there is supposed to be a boarding house.

Q. Did you ask him anything about the nearest station out of town?

Capt. HENRIQUES: I object.

By the COURT: Gentlemen, I will allow this question simply to permit the contradiction of the witness; in other words, to disprove the statement made by the accused; otherwise, I will charge you it is not to be considered by you.

Q. You said in your direct examination that you met this man Kerns or Manners in Chicago?

A. I said I met him once on a previous occasion in Chicago.

Q. Did you know him?

A. I didn't know his name.

Q. Did you know his occupation?

A. I only knew what he said his occupation was.

Q. You were not intimately acquainted with this man?

A. No, sir.

Q. You had met him a few times?

A. No, sir, not a few times, once in Chicago, previous to the New Orleans occasion.

Q. And once here?

A. Well, at the race track, and then, of course, in his room No. blank.

Q. Twice here?

A. Yes, sir, that many anyhow.

Q. You had seen him three times altogether?

A. Yes sir, I had seen him three times.

Q. Did you know who he was when you met him at the St. Charles hotel?
A. Only from what he told us.

88 ROBERT L. WEST, witness in his own behalf did testify as follows after being sworn:

Capt. HENRIQUES:

Q. How did you come to have possession of this property, this jewelry?
A. Mr. Manners gave it to me.
Q. Mr. Manners gave it to you?
A. Yes sir.
Q. He is known by the name of Kerns?
A. Yes, sir.
Q. He gave it to you?
A. Yes, sir, he did.

Cross-examination by Mr. MOONEY:

Q. Did you know this man Manners?
A. No, sir, I did not.
Q. When did you first see him?
A. On the 14th of January.
Q. Where?
A. At the race track.
Q. Did you have any conversation with him?
A. I did not.
Q. How many times did you see him?
A. I saw him twice.
Q. Once at the race track, and once in his room?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.

End.

Reported by—
(Signed) STURGES Q. ADAMS,
*Official Stenographer.*

89 GENTLEMEN OF THE JURY: The prisoners at the bar are presumed to be innocent until they are proven guilty. The consequence of this rule of law is, they are not required to prove their innocence but may rest upon the presumption in their favor until it is overthrown by positive affirmative proof. The onus is therefore upon the State to establish to your satisfaction beyond any reasonable doubt, the guilt of the prisoners, as to the crime charged in this indictment, or any other lesser one included in it.

If you entertain any reasonable doubt as to any fact or element necessary to constitute the prisoner's guilt, it is your sworn duty to give them the benefit of that doubt, and return a verdict of acquittal. And even where the evidence demonstrates a probability of guilt, yet, if it does not establish it beyond reasonable doubt you must acquit the prisoners. This doubt must be a reasonable one, that is, one founded upon a real, tangible, substantial basis, and not upon mere caprice, fancy or conjecture. It must be such a doubt as would give rise to a grave uncertainty raised in your minds by reason of the unsatisfactory character of the evidence; one that would make you feel you had not an abiding conviction to a moral certainty as to the prisoners' guilt. To put it differently, you must be satisfied of the prisoners' guilt, by that degree of assurance which induces a man of sound mind to act without doubt upon the conclusion to which it leads. If, after giving a fair and impartial consideration to the facts of the case, you find the evidence unsatisfactory upon any one single point indispensably necessary to constitute the prisoners' guilt, this would give rise to such reasonable doubt as would justify you in rendering a verdict of not guilty.

*Judges of Facts and Law.*

You are prohibited by law and your oath from going beyond the evidence to seek for doubts upon which to acquit or convict the prisoners, but must confine yourselves strictly to a dispassionate consideration of the testimony given upon the trial. You must not have recourse to extraneous facts and circumstances in reaching your verdict. You are the exclusive judges of the facts. You find from the evidence what facts have been proven, and what facts have not. For this purpose you determine the credibility of the witnesses and the weight to be given to their testimony. You have the right to accept as true or reject as false the testimony of any witness, accordingly as you are impressed with his veracity. You take into account his manner on the stand, the probability or improbability of statements, the interest or want of interest he may have in the case, and every circumstance surrounding the giving of his testimony which may aid you in weighing his statements. You are also the judges of the law. You are the judges of the law in the same sense that you are the judges of the facts. You receive the one from the witnesses, you receive the other from the court.

The prisoners are permitted by law to testify in their own behalf. If they exercise this privilege they are governed by the same rules in testing their credibility, and the correctness of their statements, as every other witness. You have the right to believe or disbelieve them, just as they impress you as to the truth or falsity of their testimony.

*Circumstantial Evidence.*

There are two methods by which facts can be established; the direct and the circumstantial evidence. Direct evidence is the evidence of certain facts, bearing directly and without inference on the question at issue or the facts to be proved.

Circumstantial evidence is the evidence of certain facts from which are to be inferred the existence of other material facts bearing upon the question at issue, or the facts to be proved. This evidence is legal and competent, and when of such character as to exclude every reasonable doubt of defendant's innocence, is entitled to as much weight as direct evidence. When a conviction is sought upon circumstantial evidence alone, it must not only be shown by preponderance of evidence that the facts are true, but they must be such as are absolutely opposed, upon any reasonable ground
91 of reasoning, *with* the innocence of the accused, and incapable of explanation upon any reasonable hypothesis than that of the guilt of the accused.

The degree of certainty must also be equal to that of direct testimony, and if there is any one single fact proved to your satisfaction by a preponderance of evidence, which is inconsistent with defendants' guilt, this is sufficient to raise a reasonable doubt, and the jury should acquit the defendants.

The accused at the bar are charged as principals in the crime charged. There are two sorts of principals: those who are the actual perpetrators of the criminal act and those who are present, aiding, assisting, abetting, counselling, and instigating the commission of the offense. The one aiding, assisting, abetting, counselling, and instigating, in the eye of the law, is equally guilty with the actual perpetrator of the offense. If an accused is present at the scene of a crime, but takes no part in it, either directly or constructively, nor aided, abetted, nor encouraged the perpetrator in his unlawful act, he is not a principal.

Mere presence at the commission of a crime, or even sympathy with a criminal, is not sufficient to make the party a principal. To constitute a man a principal, he must actually assist and encourage, aid, or abet his accomplice in the perpetration of the crime.

*Larceny.*

Larceny is the felonious taking and carrying away of the personal property of another, with the intention of appropriating it to the taker's use and to deprive the owner of his property permanently.

To constitute the offense, there must have been an unlawful taking and carrying away of the property charged in the information, or any part of it.

It needs to be taken, but no particular distance; all that
92 is necessary is that it should have been removed from the place where the possessor left it, with the intention to steal; that is, with the intent of appropriating it to the taker's own use, and to deprive the owner of his property permanently.

It must be the property of another. The ownership of the property must be laid in the proper person, and must be proved as laid.

It is sufficient to allege ownership in the person having control of the property, and the taking must have been without his consent.

The property must have some value, and some value must be proved.

Where the value of property proven to have been stolen, is one hundred dollars or more, it is grand larceny; where the property is valued at less than one hundred dollars, the crime is petty larceny.

When goods stolen are very shortly afterwards found in the possession of a man who is unable satisfactorily to show by evidence in what manner he came by them, the presumption is that he is the person who stole them.

Under that rule, the possession shortly after of stolen goods by the accused, throws upon him the burden of showing the way that he came by such possession, in default of which, the *prima facie* presumption becomes absolute, and justifies conviction.

Should he account for his possession to your satisfaction, in a way consistent with his innocence, you should give him the benefit of his explanation, or if his explanation raises in your minds a reasonable doubt as to his guilt, you should give him the benefit of that doubt.

In considering the question of a defendant's possession of property recently stolen, for the purpose of drawing the presumption of guilt, it is necessary, first, that possession should be distinctly traced to the accused, beyond any reasonable doubt; that the possession was recent with the thief; and that the property has been
93 identified as the property of the owner, as charged in the information. This possession must also be considered in connection with all the other facts in the case, and if any of these are at variance with the probability of guilt, it would be your duty to give the accused the benefit of the doubt thus raised.

I charge you that there must be positive evidence of those circumstances from which guilt is inferred, and that these facts must be incapable of explanation upon any reasonable grounds other than that of the guilt of the accused.

The fact that property has been acquired, or is possessed unlawfully or criminally, does not deprive it of its character of property, or outlaw it so as to withdraw it from the protection of the criminal law, and prevent it from being larceny to feloniously take and carry it away. Thus, property stolen by a person may become the subject of larceny if the same property be stolen from the thief and it may be charged that the property was stolen either from the orig-

inal owner or from the thief having possession of the property at the time. The right of property remains all the time in the owner, as a matter of law. Thus, stolen goods, while in the possession of the thief, may be again stolen by another thief, and the latter may be charged with taking and carrying away the goods of the owner, and for the purpose of sustaining said charge, the possession of the first thief will be regarded as the possession of the true owner.

In order to, sustain a charge of larceny, the venue must be established beyond a reasonable doubt. In other words, it must be established that the property stolen was the property of the owner as charged in the information, and that the property was stolen within the jurisdiction of this court.

The court further instructs you, as a matter of law, that if property is taken by the accused at the bar, in another State, and brought to this State, and found in the possession of a person in this State, or that where goods are stolen in another State and sold here, it would not be proof of larceny committed in this
94 State, and no person can be tried or convicted of a crime that was not committed in the State of Louisiana and within the jurisdiction of this court. If, from all of the evidence offered on the trial herein, the jury are satisfied beyond a reasonable doubt that the property alleged in this information had been stolen in the State of New York, and then brought within the jurisdiction of this court, then these defendants would be guilty of no offense against the laws of the State of Louisiana, and the jury should acquit them. If, after a careful consideration of all the evidence in the case, it is shown that the larceny as charged in this information, was not committed by the accused within the jurisdiction of the State of Louisiana, and was not committed by these defendants, or by either one of them, in this State, but was committed by them in another State and beyond the jurisdiction of this court, then the jury should acquit the defendants.

You may find one of three verdicts: First, guilty of grand larceny, in which case the accused would be subject to punishment by imprisonment in the parish prison, or at hard labor in the penitentiary, at the discretion of the court, for not more than ten years.

Second, guilty of petty larceny, in which case the accused would be subject to imprisonment in the parish prison, or in the State penitentiary, at the discretion of the court, for not more than two years; or

Third, not guilty.

95 *Plea to the Jurisdiction.*

Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

And the said defendants, Robert L. West and George I. Kline, now on trial, the evidence of the State having been heard, say:

That the court here ought not to take further cognizance of the offense herein set forth in the said information, because that the evidence elicited herein shows conclusively that this honorable court is without jurisdiction in the premises, for the reason that under the evidence here offered on this trial, and which is on file and is part of the record herein, the alleged larceny is shown to have been committed out of the jurisdiction of this court, and by said evidence it is affirmatively proven that if there was a larceny committed, it was committed in the city of New York and by one Edward Kerns, Jr.

And for further reason why this court has no jurisdiction, these defendants aver that the subject-matter of the offense as herein shown by the evidence was committed in a foreign jurisdiction, and that the venue as laid in the information has not been proven on the trial hereof.

Wherefore, the said Robert L. West and George I. Kline, the defendants herein, do now pray judgment, and that this honorable court ought not to take further cognizance of the information and the matters therein set forth, and that they ought to be discharged and dismissed from the premises.

April 4th, 1902, filed, submitted, and for reasons dictated to the stenographer, overruled, with reservation to the defendants.

(Signed) A. J. DESMOND,
*Minute Clerk.*

96 *Filing of Motion for New Trial and Bills of Exception.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

MONDAY, *April 28th*, 1902.

Pursuant to adjournment court met this day at 10:30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dist. attorney.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 31923. Information for Grand Larceny.

Messrs. Henriquez and Dunn, of counsel for the defendants, George I. Kline and Robert L. West this day presented to the court a motion for a new trial in the above cause, and bills of exception numbered 1, 2, 3, 5, 6, 7, 8, and 9. The court orders the said motion for a new trial, as aforesaid, filed and fixed for hearing on Friday, May 9th, 1902; and the court having signed the bills of exception presented and numbered as aforesaid, orders the same filed.

97 Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exception No.* 1.

Be it remembered, that on the 27th day of March, 1902, the said defendants, Robert L. West and George I. Kline, being placed at the bar of the court, and attended by their counsel, Henriquez & Dunn, then filed the following plea to the jurisdiction of the court, which is as follows:

"And the said defendants, Robert L. West and George I. Kline, in their own proper person, jointly and severally comes here into court, and having heard the said indictment read, says:

"That the court ought not to take cognizance of the crime in the said information specified, because, protesting that they and each one of them are not guilty of the same, nevertheless, the said Robert L. West and George I. Kline avers and represents:

"That the record herein, and the evidence taken before the Honorable Thomas M. Gill, Jr., judge of the first city criminal court for

the parish of Orleans, on February 19th, 1902, affirmatively shows that this honorable court has no jurisdiction over these accused, nor over the matters alleged, charged, and specified in the said information, because on the examination hereof before the said first city criminal court for the parish of Orleans, the witness, Paul G. Thebaud, being sworn on behalf of the State, did testify that the alleged larceny, as herein set forth, was committed in the State of New York, and not within the jurisdiction of this honorable court;

"Second. Because the said Paul G. Thebaud is alleged in the instant information to be the owner of the property herein alleged to have been stolen;

"Third. Because under the law, where property stolen in another State, and brought to this State, if even by the thief, the crime of larceny is not committed in the State of Louisiana;

"Fourth. Because the said Paul G. Thebaud, in his testimony and evidence given before the first city criminal court, and which is on file in this honorable court, and is part of the record hereof, testified that these accused were not the persons who committed the alleged larceny, but, on the contrary, that the larceny of his goods and chattels, as charged in this information, was committed in the State of New York, and by one Edward Kern, Jr., who was then in his employ.

"And for further reason why this court has no jurisdiction herein, these defendants aver and represent, that if a larceny was committed in the State of New York, and stolen goods were brought into this State, then the courts of Louisiana have no jurisdiction *in* either over the person or the subject-matter of the offense; that the jurisdiction over the offense is in another tribunal—to wit, the court or courts of the State of New York.

"Wherefore, the said Robert L. West and the said George I. Kline, defendants herein, pray judgment and that this honorable court ought not to take cognizance of the information herein, and that they and each one of them may be dismissed and discharged therefrom."

And in support of said plea to the jurisdiction, as aforesaid, the said counsel desire to read to the court from the record of
98 evidence taken on the preliminary hearing in the first city criminal court, namely, the testimony of Paul G. Thebaud, the testimony of T. E. Manners, alias Kerns, and the testimony of Sergeant Kelley of the police force of New York, for the purpose of showing the court that although the information herein charges these defendants, Robert L. West and George I. Kline, with the larceny of certain property as set forth in the information herein, and that the venue as laid in the information is stated to be the parish of Orleans, whereas, by the testimony of said witnesses, it was affirmatively shown that the property alleged in the said information to have been stolen in this parish and State, was stolen in the city of New York, and by one Edward Kern, Jr., and that the said Edward Kern, Jr., was then a fugitive from justice, and had

been taken back to the city of New York on requisition, on the same identical charge whereof these defendants were held before this court; that the testimony of Paul G. Thebaud *was* taken before the first city criminal court, was as follows, to-wit:

By Captain HENRIQUEZ:

Q. Are you in custody now — a prisoner?
A. No, sir.
Q. Are you detained under a bond as an important witness, or as a material witness in this case?
A. No, sir; I have been served notice to appear here in this court.
Q. Have you at any time ever made any application to the court to have your testimony heard?
A. No, sir.

99 Direct examination by the STATE:

Q. Where do you live?
A. New York, city.
Q. When did you come to New Orleans?
A. Last Saturday night.
Q. When do you expect to leave?
A. I want to go home tonight, very much.
Q. Do you know when you will return to this city?
A. I don't expect to return here.
Q. Kindly examine these articles and select those that are your property, if any of them are.
A. This travelling case is mine.
Q. What is the value of that?
A. I couldn't tell you.
Q. Can't you approximate it?
A. About ten or twelve dollars, fifteen dollars, something like that. This pipe is worth about fifteen dollars; that is mine. That watch fob is worth about thirty dollars. This knife here, I could not tell you what that is worth exactly, about three or four dollars. These razors are not mine. If my memory holds, I bought the case and didn't use it, but the razors are not mine.
Q. What is that case worth?
A. I can't tell you the value of these things, gentlemen; I am not a pawnbroker; perhaps one dollar and a half. There is a set of studs, I couldn't value those; they look like amethysts; I should think twenty or twenty-five dollars. Those I don't know what they are worth; I believe they are worth some two hundred dollars or more, a couple of pearl shirt studs. These things I could not value them at all.

By the COURT:

Q. Take them up one by one.
A. Here is a frog pin; I should imagine that was worth—I couldn't tell you; that was a present to me—perhaps one hundred

dollars. One crown pin, about twenty-five dollars; another frog on ball, about ten or fifteen dollars; this pin, about forty dollars; here is a pin with red stones, worth about fifteen dollars; here is a golf pin, about two or three dollars; here is another worth two or three dollars. Fifty pins here—I should think they would average between fifteen and twenty dollars apiece. These three pieces
100 here, two ladies' belt pins and a brooch, possibly fifty dollars for the three pieces, more or less, perhaps. There is a couple of pearl sleeve links; I should imagine they are worth a couple of hundred dollars.

Q. They are your property?

A. Yes, sir. Here is a ring with a watch in it; it is an antique; say fifty dollars. Here is a second lot of scarfpins, fifty-three, about ten dollars apiece, perhaps; I don't know.

Q. Are they worth three and a half?

A. I don't care, anything; put down one hundred and fifty dollars for the lot. Here is a watch worth probably five dollars. Here is a little locket perhaps worth five or six dollars. This scarf holder is worth a couple of dollars. There are three studs; I suppose they are worth a dollar apiece. Here is a fox's head worth seven or eight dollars, I suppose. Here is another scarfholder, worth a couple of dollars. These scarfholders are worth about two dollars apiece, I suppose. These cuff links are worth about ten dollars. Here are a couple of shirt buttons worth twenty-five cents apiece, I suppose. Here are some vest buttons, fox's heads, worth about sixty-five dollars. These buttons, green stones, I should think are worth twenty or twenty-five dollars. This box of cartridges is mine. This toilette set is part of the bag.

Q. Whose bag is that?

A. My bag.

Q. What is the bag and toilette set worth?

A. I guess about seventy-five dollars.

By the COURT:

Q. Whose silver box is that?

A. It belongs to my wife.

Q. These articles that you have mentioned are your property?

A. Yes, sir.

Q. Do you know how they got away?

A. I know that they were stolen from me in New York State; further than that, I came down here and found the man that robbed me of those things. I know nothing of anything else in the matter except hearsay.

Q. You say that these things were taken from you in New York State?

A. New York city.

Q. Do you know a party by the name of Manners?

A. I don't.

101 By Captain HENRIQUES: I object. We are not trying Manners; we have nothing to do with Manners, and the question is irrelevant.

By the COURT:

Q. Do you know a party by the name of Manners?
A. I never heard of him.
Q. When did you first see this property after it was stolen from you?
A. Yesterday morning, over at Gretna, at the sheriff's office.
Q. Who showed it to you there?
A. The sheriff or his son.
Q. That was the first time you had seen it since it was stolen?
A. Yes, sir.
Q. This property that you have identified in court is the same property that you saw over there, and is the same property that was stolen from you?
A. Yes, sir.

Cross-examination by Captain HENRIQUEZ:

Q. Mr. Thebaud, do you know these two gentlemen sitting here?
A. I do not.
Q. Were they ever in your employ?
A. Not as far as I know.
Q. Is there any indictment or any criminal prosecution pending in New York for the larceny of this property?
A. I got an order from the court for this man.
Q. Have you got it?
A. It was served on the sheriff; it is an indictment and bench warrant, I believe.
Q. With a warrant issued from the judge before whom the indictment was found, I presume?
A. Yes, sir.
Q. Against whom was this indictment presented?
A. Edward Kern the younger.
Q. Is Edward Kern either of these two men?
A. No, sir.
Q. All of this property that you have enumerated here, was stolen from you?
A. It was, and those two pieces belong to my wife.
Q. And it was stolen from you in the State of New York?
A. Yes, sir.
Q. Where was it stolen from?
A. No. 158 Madison avenue.
Q. That is your home?
A. That is my home.
Q. You cannot be mistaken about this being your property?
A. As far as my knowledge, I believe it is my property.

102 Q. Was Kerns in your employ?

A. He was.

Q. When did he leave your employ?

A. Either the 29th or 30th of December, the day he stole these things.

Q. Under what circumstances did he steal this property? How did he come to get it?

A. He was my valet, and he had access to it in my closet; and I sent him up the country in the morning; I was going out to spend Sunday in the country; Saturday morning I sent him up, and he came back, and went to the house in the afternoon, as far as I know; and Sunday night I found these things missing. When I went up the country Saturday night, he had taken these things away from the city house, and I was to stay with a friend of mine in the country; and he took my wife's things, which I got most of them back from White Plains, two or three miles outside of the city, and he brought those things back to the city with him.

Q. Were there other articles stolen from you besides this?

A. Yes, sir.

Q. What did they consist of?

A. They consisted of the same line and maybe other things that I have not found yet. This ring with the watch in it, I never knew until a few days ago that it was gone.

Q. Did you ever search in any of the pawn-brokers' places here?

A. No, sir.

Q. Did you lose any diamonds either set in scarf pins or any others besides those, and besides what you have recovered in New York city?

A. Yes, sir.

Q. There were other articles missing that you have not yet recovered?

A. Yes, sir.

Q. They were all stolen at the same time by this man?

A. I couldn't say that because I was not with him, and he had a half of Saturday, and then he came to me the next morning; I went out in the morning at eight o'clock, and he took my wife's things from the country, and I haven't seen him since. I didn't discover the robbery until seven o'clock that night.

Q. Have you seen this man since you came to New Orleans?

A. Yes.

Q. When did you see him, and where?

A. Over at the Greta jail yesterday, and I have just seen him in this room a few minutes ago.

103 Q. That is the man who robbed you?

A. To the best of my belief.

Q. He is the man by the name of Kerns?

A. Edward Kerns, the younger.

Q. How long had you had him in your employ?

A. About two months.
Q. Did you ever know him by the name of Manners?
A. I never did.
Q. What did he tell you his name was?
A. Edward Kern, Jr.
Q. Did you know his parents?
A. I did.
Q. Are they in your employ?
A. Not now.
Q. They were?
A. Yes, sir; I engaged him at the same time.
Q. Were their names Kerns?
A. Yes, sir.
Q. Is he the son of that man and woman?
A. Supposed to be.
Q. They acknowledged him their son?
A. They said he was.
Q. That is the man Kerns that you saw over in the Gretna jail?
A. Yes, sir.

And the testimony of said T. E. MANNERS, alias KERNS, is as follows:

104 Direct examination by the STATE:

Q. When did you arrive in this city, Mr. Manners?
A. I arrived in this city Monday evening, one week ago.
Q. Are you the same T. E. Manners who was stopping at the St. Charles hotel on the 14th of this month?
A. Yes, sir; that is the day I arrived.
Q. Just state whether or not any property belonging to you was stolen from you, while you were staying at the St. Charles hotel.
A. There was.
Q. Will you tell the court what that property consisted of?
A. Clothing, shirts, collars, cuffs, and handkerchiefs, socks, brushes, and little private articles.
Q. Where did you leave these things?
A. In my room.
Q. I mean, were they scattered about the room, or did you have them in a satchel, or valise, or something of that kind?
A. I refuse to answer that question.

By Captain HENRIQUEZ: We object to this testimony; we are not charged with stealing clothing; we ask that the testimony be stricken out of the record.
By the COURT: Objection sustained.

By the STATE:

Q. Besides this clothing, was there anything else stolen that day?
A. I refuse to answer.

Q. On what ground?

A. On the ground that I might incriminate myself.

Q. Are you acquainted with the parties at the bar, Kline and West?

A. I am not acquainted with the parties.

Q. Do you recollect having seen either or both of them before the 14th of January?

A. I cannot positively say that I have seen either one of them before the 14th of January. I thought I had seen one of them, but I was not sure.

Q. Which one did you think you had seen before?

A. I thought I had seen Kline before.

105 Q. But you were not personally acquainted with him on this date?

A. No, sir.

Q. Did you ever have any dealings with either of them?

A. No, sir.

Q. Did you give Kline or West, or both of them, anything?

A. I haven't given them anything.

Q. Did you authorize them to take anything from the St. Charles hotel?

A. I did not.

Q. Do you recollect having seen either of them at the St. Charles hotel?

A. I do recollect having seen one of them at the St. Charles hotel.

Q. Which one?

A. The man by the name of Klein.

Q. When did you next see him?

A. I seen him next over in the Gretna jail.

Q. Of course, you don't know how he got there; I mean, of your own personal knowledge?

A. No, sir.

Q. Where were you on the 14th of January?

A. On the night of the 14th of January I slept at the St. Charles hotel.

Q. Did you make any complaint to the police on the 14th?

A. I did make a complaint.

Q. What time was it when you complained, Mr. Manners?

A. I cannot tell; it must have been about half-past twelve or one o'clock.

Q. Was that the night of the 14th, or early morning of the 15th?

A. Yes, sir.

Q. Where had you been that night?

A. I had been to theatre.

Q. After the theatre, and before you made this complaint, had you returned to the St. Charles hotel?

A. I had.

Q. How long did you remain at the hotel?

A. Perhaps a half an hour or so.

Q. Did you make any complaint to anyone at the hotel?
A. Why, yes.
Q. Do you recollect to whom you made the complaint?
A. To the clerk.
Q. You don't know his name?
A. I don't.
Q. It was after making that complaint that you came to
106 the police, or made your complaint to them?
A. They were the first ones to think of.
Q. Who do you mean by "them"?
A. The clerks, the men in the hotel.
Q. Where did you go to make your complaint to the police?
A. I really did not make any formal complaint; I just went down to the chief's office, and we tried to find out if they knew anything about it.
Q. You came to the chief's office, is that right?
A. Yes, sir.
Q. Who did you see in the chief's office, do you know?
A. Well, I don't know anything about that.
Q. I believe I neglected to ask your occupation.
A. I am a clerk.
Q. Will you tell us for whom?
A. I decline to answer that.
Q. On what ground?
A. On the same ground as before.
Q. Look at this satchel or grip, Mr. Manners, and tell me if you can identify it.
A. I decline to answer.
Q. On what ground?
A. On the same ground.

And the testimony of Sergeant Kelley is as follows, to-wit:

Direct examination by Mr. LUZENBERG, att'y for T. E. Manners:

Q. You are Sergeant Kelley of New York?
A. Yes, sir.

By Mr. LUZENBERG: My client tells me to state that he is the Edward Kern Sergeant Kelley holds a warrant for, and he is willing to go back to New York with the sergeant.

By the COURT, to Sgt. Kelley:

Q. That is the man you want?
A. Yes, sir.
Q. And you are authorized to take him back?
A. Yes, sir.

And furthermore, these defendants, by their said counsel, desired, in support of their plea to the jurisdiction herein filed and then before the court, to show that the said Kern, alias Manners, admitted through his counsel, and on the preliminary hearing, that
107 his name was Edward Kern, and that he was willing to go back to New York with Sergeant Kelley.

Be it further remembered that after the offer as heretofore made, by counsel representing these defendants, to read said testimony herein set forth, in order to substantiate their plea to the jurisdiction, the assistant district attorney, representing the State, objected to the offer, and the court ruled:

"On the preliminary examination of the charge made against Robert L. West and one George I. Kline, of grand larceny, before the first city criminal court, certain parties were examined by the judge of that court in order to determine whether there was such a case as would justify sending of the parties to the proper tribunal to be tried. After an investigation, the case was sent to the criminal court, to be tried according to law. Subsequently, that is to say, on the 25th of February, 1902, an information was filed against the two accused for grand larceny. They were arraigned, and upon their arraignment leave was asked to file any plea that the accused may desire hereafter. Subsequently, a plea to the jurisdiction of this court was filed.

"Upon the trial of this plea, the accused through their counsel proposed to offer in evidence the testimony of the witnesses mentioned in the offer made by them above, upon which to rest the plea to jurisdiction, which they filed in the court, upon the ground that the testimony forms part of the record of this court.

"The testimony taken in the lower court is not testimony in this court, unless offered anew, and only under certain contingencies provided by law can it be used at all. The State charges in the information a certain crime against the accused which must be established by the State upon proper evidence, and what evidence will be adduced can only be disclosed upon the trial of the
108 case. I do not consider that the testimony taken in the lower court is testimony in this court, and part of the record in the district court. It will become part of the record only after offer, and it can be offered and used only under certain circumstances. I, therefore, maintain the objection of the State, as I am of opinion that the testimony offered and intended to be used as the basis to the plea to the jurisdiction filed in this case, is not testimony, and cannot be considered by this court, unless it be offered under the provisions of law now existing, governing such offers."

To the ruling of the court, counsel for these defendants then reserved a bill of exceptions, and as a part of said bill, makes the plea to the jurisdiction part thereof, as well as the testimony of Paul G. Thebaud, T. E. Manners, alias Kern, the witness, Sergeant John F. Kelley of New York city.

And the court further rules that the plea to the jurisdiction which was filed herein, having been submitted to the court, that the same is referred to the merits, to be there tried, after testimony shall have been offered on behalf of the State and the defendant, in order to determine from that testimony whether this court has jurisdiction of the subject-matter, or not.

To all of which rulings of the court, counsel representing these defendants then and there excepted, and now tenders this their bill of exceptions for signature, and prays that the same may be filed and made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902,

(Signed) A. J. DESMOND,
*Minute Clerk.*

109 Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 2.

Be it remembered that on the third day of April, 1902, the above entitled and numbered cause having been called for trial in section B of the criminal district court, for the parish of Orleans, and the accused, Robert L. West and George I. Kline, being placed at the bar of the court, attended by their counsel, Henriquez & Dunn, the State and defendants having announced that they were ready to proceed to trial, and a jury having been empaneled to try this cause, the State then called to the witness stand, for the purpose of proving that one Paul G. Thebaud, a witness whose testimony was taken at the preliminary examination, was absent from the State, one Felix Couturie, who, after being duly sworn, testified as follows:

By Mr. MOONEY:

Q. Mr. Couturie, do you know Paul G. Thebaud?
A. Yes. sir.
Q. Do you know whether he lives in the city of New Orleans? How long have you known Mr. Thebaud?
A. I made his acquaintance when he came to New Orleans.
Q. Do you know the family?
A. Yes, sir.
Q. Do you know that they live in New York city?
A. Yes, sir.
Q. Do you know where Mr. Thebaud is now?

A. To the best of my knowledge, he is in New York at the present moment.
Q. When did you see him last?
A. On the night that he left for New York.
Q. What night was that?
A. I don't remember the date, but I accompanied him to the train that night.
110 Q. What train was that?
A. The L. and N.
Q. Do you know where he was going?
A. New York.
Q. Do you know whether he had a ticket for New York?
A. Yes, sir.
Q. You saw him get on the train?
A. Yes, sir.
Q. Have you heard from him since?
A. Yes, sir.
Q. Where were the letters written from?
A. New York city.
Q. Where is Mr. Thebaud now?
A. I think he is in New York; I haven't heard from him in the last two weeks.
Q. Has he any residence in the State of Louisiana that you know of?
A. No, sir.
Q. Is he a resident of the city of New York?
A. Yes, sir.

Cross examination by Captain HENRIQUEZ:

Q. When did you hear from him?
A. About two weeks ago.
Q. You haven't heard since?
A. No, sir.
Q. You don't know where he is at this time?
A. No, sir.

Also one L. T. KIRN, deputy to the criminal sheriff, who testified as follows:

By Mr. MOONEY:

Q. Mr. Kirn, do you hold any position in the parish of Orleans?
A. Yes, sir.
Q. What is it?
A. Deputy criminal sheriff.
Q. Examine this slip, of paper, and tell me what it is.
A. It is a subpœna for Paul G. Thebaud, St. Charles hotel.
Q. Did you serve it?

A. I went there and made a diligent search for him, and left it in the hands of Mr. Cunningham, and Mr. Cunningham informed me that Mr. Thebaud had left this city since January 21st.

Cross examination by Captain HENRIQUEZ:

Q. Who is Mr. Cunningham?
A. One of the register clerks there, who looked over the books for me.
111 Q. Did you make any further inquiry to find out if Mr. Thebaud was in New Orleans?
A. No, sir, he told me he was there, and had left for New York on the 21st.
Q. Did you make any other inquiry except to go to the St. Charles hotel, and get what information you could from this man Cunningham?
A. No, sir.
Q. You never went to any other place?
A. No, sir.
Q. Do you know where he is now?
A. No, sir, only they told me he went to New York.
Q. In the month of January?
A. Yes, sir.
Q. Do you know where he is now?
A. No, sir.

Redirect examination:

Q. When did they tell you that?
A. On the 25th day of March, the day the paper was issued.

Re-cross-examination by Captain HENRIQUES:

Q. They told you he had left when?
A. On January 21st.

That the said testimony offered on behalf of the State was for the purpose of laying the foundation for the introduction of the evidence of Paul G. Thebaud, taken on the preliminary examination before the first city criminal court; that at the time, and when said testimony was heard, the assistant district attorney, representing the State, announced to the court as follows:

"Now, if the court please, we have shown by two witnesses that Mr. Thebaud is absent from the State, and I submit that sufficient showing has been made, under the law, and that we now have the right to read the testimony taken in the lower court. I now propose to read the testimony of Mr. Thebaud."

To which offer, counsel for the defendants objected, on the following grounds:

"Because nowhere in this evidence which was offered to
112 lay a foundation for the introduction of testimony taken or alleged to be taken before the committing magistrate, of the witness, Thebaud, is it shown that he is at this time out of the city of New Orleans this day, nor is there any evidence offered on behalf of the State to prove affirmatively that the witness named Thebaud is permanently absent from the State of Louisiana."

Counsel for these defendants furthermore stated to the court that they had other objections to urge to the introduction of this testimony, which could not be urged at this time, unless the court considered that proper foundation had been laid.

To which the court stated:

"By the COURT: Upon the evidence offered, I will allow the testimony offered."

Counsel then and there stated to the court, and asked whether the court considered that sufficient foundation had been laid, to which the court answered "Yes;" and to the ruling of the court at this time made, permitting the testimony of said witness, Paul G. Thebaud, to be read, counsel then and there reserved a bill of exception, which they now tender for signature, and pray that the same be filed and made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902,
(Signed) A. J. DESMOND,
*Minute Clerk.*

113 Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 3.

Be it remembered that on the trial of the above-entitled cause, on the third day of April, 1902, after the court had ruled that the testimony of Paul G. Thebaud could be read to the jury, and before the reading thereof, counsel representing these accused called to the witness stand Judge T. M. Gill, Jr., Henry Mooney, assistant district attorney, and A. D. Henriquez; that said witnesses were called for the purpose of proving that the examination before the first city criminal court was fixed in said court for the 25th day of January, 1902, but that prior to said day of examination, and on the 21st day of January, 1902, the said defendants, without notice, were taken to the first city criminal court, and when in said court, announcement was made by the judge of said court, that the said defendants were called before the court for the purpose of hearing the testimony of

Paul G. Thebaud, a witness on behalf of the State; that at that time, counsel for these defendants entered the following objections to the hearing of said testimony:

That the said Paul G. Thebaud was not a prisoner in jail; that he had not asked the court that his testimony be heard; that there was no evidence before the court that he had asked to be heard as a witness in this case; that if this proceeding was had, under the acts of 1896, then that defendants object because the said Paul G. Thebaud was not in jail; that no service of notice to hear the testimony of said witness, Thebaud, had been served on these defendants; that the cause having been fixed for examination

114 for the 25th day of January, 1902, and it not being shown that it was absolutely necessary that the testimony of said Paul G. Thebaud should be heard at this time, counsel for these defendants object to the hearing thereof.

And, furthermore, that the hearing of said testimony of Paul G. Thebaud before the first city criminal court was irregular, and not warranted by law; that there was no evidence to show that the said witness had asked that his testimony be taken in advance of the preliminary examination, nor was any notice served upon these accused of the intention to take the testimony of said witness, Paul G. Thebaud, prior to the examination of this case, which had been fixed for the 25th day of January, 1902.

That no application was made to the district attorney for the parish of Orleans, or to any assistant district attorney, that the witness desired that his testimony be heard in advance of the preliminary examination; that as the preliminary examination had been fixed for the 25th, the hearing of this testimony was irregular, unwarranted, and not in accordance with law.

And now, as part of this bill of exception, the testimony of Judge Thomas M. Gill, heard in support of the objection made by counsel for these defendants, also the evidence of Henry Mooney, the assistant district attorney, and A. D. Henriquez, which are herein set out and are as follows, to-wit:

Judge T. M. GILL, being first sworn, did depose and say:

115 By Captain HENRIQUEZ:

Q. Judge Gill, you are the judge of the first city criminal court of New Orleans?

A. Yes, sir.

Q. This is the affidavit against Kline and West, which was made before your court?

A. Yes, sir.

Q. Do you remember when Mr. Paul G. Thebaud testified in your court?

A. Well, I would rather see the record.

Q. Judge, can you remember whether he testified there? Did you see him?

A. I met Mr. Thebaud, yes, sir.

Q. Did he testify on the examination of the case, or before the examination?

A. As I said, I would rather see the record; the record shows everything, and should give the date.

Q. There is the record.

A. Yes, sir; this record shows that he testified before the court—there is no date given on it.

Q. Do you remember, as a fact, whether he testified on the examination or before the examination of the case?

A. Well, I am not sure.

Q. Well, now, Judge, let me refresh your memory a little. Do you remember when Mr. Thebaud was brought into court, I objected to his testifying?

A. I remember it was stated to me that Mr. Thebaud, who was staying at the St. Charles hotel, was a witness in the case. I remember having the clerk send him a summons. I remember his going there. It was stated to me that he desired to leave for New York. He was called for the purpose of taking his testimony, and that you objected and urged your objections, and that I took a recess for a certain length of time, and I remember that his testimony was heard.

116 Q. Do you remember that that took place, and that he testified in your court before the case was examined—before the examination was fixed?

A. Well, Captain, we try a great many cases.

Q. I know, Judge, but this is an important case.

A. That is a matter of indifference to me. I dispose of the cases, I certify to the record, and I don't make any attempt to remember.

Q. Do you remember as a fact that Thebaud testified two or three days before the case was examined?

A. I am not prepared to say how many days.

Q. Do you know that he testified before the case was examined?

A. That is my impression.

Q. Judge, here are the notes of your stenographer; the case is called for the purpose of hearing testimony by one Paul G. Thebaud, a witness on behalf of the State?

A. Yes sir, I certified to that.

Q. Do you know that this happened before the case was examined?

A. It is not fresh in my mind, but I would not have certified to it if I had known it to be otherwise.

Q. Can't you testify to a fact; I am asking you to state a fact; do you know the date that Paul G. Thebaud testified in your court before the examination?

A. When the application was made, I understood he was about to leave for New York.

Q. Well, Judge, I am asking you about one single fact; do you know that Paul G. Thebaud testified in your court before the examination of this case?

A. I think when Mr. Thebaud took the stand it was after one o'clock, and court adjourned immediately after his testimony was heard, and that no other witness was heard that day.

Q. Do you know it as a fact that he testified before the other witnesses, that the other witnesses were only heard several days after?

A. That is my impression.

Q. Is it not a fact?

A. Well, that is the way, I remember it, that he testified
117 some time before the other witnesses

Q. And before the case was examined?

A. I believe so.

Q. Can't you be any more definite than that, Judge?

A. It is very hard to remember the exact days that all the cases are disposed of. Sometimes we dispose of over fifty a week. It is very hard to remember them.

Q. Do you in every case take the testimony of witnesses before the examination in court, is not this a rare occurrence?

A. It does not occur regularly.

Q. Well, how many cases have you done it in besides this?

A. I have done it in other cases—the number I don't remember.

Q. Well, Judge, that is all.

118 HENRY MOONEY, being first sworn, did depose and testify:

By Capt. HENRIQUES:

Q. Mr. Mooney, is it not a fact that Paul G. Thebaud testified before the case was examined in Judge Gill's court?

A. Well, my recollection is that he did testify as the first witness in the case, possibly a few days prior to the other witnesses.

Q. And before the case was set down regularly for examination?

A. Well, I could not swear to that, for the reason that I was trying cases in section A, and they sent for me to come over, I remember, though, that his evidence was not heard the same day the other witnesses' evidence was heard.

Q. It was heard before?

A. Yes, sir.

Q. And the examination of the case was taken several days afterwards?

A. Yes sir, the rest of the witnesses were heard several days afterwards.

Q. Did Mr. Thebaud present an application in writing to the district attorney or his assistant asking that his testimony be taken in advance of the preliminary examination?

A. He did not, sir.

Q. Do you know of any notice having been served on West and Kline, the defendants, two days or at any time before Thebaud was examined?

A. I do not, sir.

Q. Do you know it or not as a fact that these men were brought over from the parish prison, and that Mr. Thebaud was to be examined as a witness, and that this took place. You were there at the time that Kline and West were brought over from the parish prison for the purpose of hearing Thebaud's testimony, because Thebaud was about to leave the city, and that at that time I interposed objections which are here noted in the record.

A. Yes sir, I have seen the objection, that is my recollection in the record.

Q. Didn't you argue the objections and contest them?

119 A. Yes sir.

Q. Then this examination of Thebaud's as a matter of fact did take place before the case was regularly examined in the first city criminal court?

A. I don't know about that.

Q. Do you know that this case was fixed for the 21st, and that Thebaud testified on the 19th?

A. I don't recollect the dates. If that is what the record shows that is about right.

Q. Do you remember that the case was regularly examined on Saturday?

A. No, sir, I don't remember that—I could not say one way or the other.

Q. Do you know that all the other witnesses in this case were heard on the examination, that their testimony was taken on the 25th, and that Thebaud testified on the 19th, or the 21st, rather?

A. I don't recollect the date—that is about right.

120 A. B. HENRIQUES being first sworn did testify as follows:

The case of the State of Louisiana *vs.* George L. West and Robert I. Kline was fixed for examination in the first city criminal court for January 25th of this year. On the 21st, in the morning I received a notice from our clients that they would be taken over to the first city criminal court. I went to the first city criminal court. The accused were called to the bar of the court and I was informed at that time upon inquiry made that they were called for the purpose of hearing the testimony of one Paul G. Thebaud, who was then about to leave the city; I then protested that as the examination of this case had been fixed for the 25th, that the proceedings then being had in the first city criminal court was irregular and not warranted by law. I had my objections noted at the time, and the objections which I had noted were as follows:

"This case was called for the purpose of hearing the testimony of one Paul G. Thebaud, a witness on behalf of the State. Counsel

for defendants objected on the ground that Mr. Paul G. Thebaud is not a prisoner in jail; that he has not asked the court that his testimony be heard; that there is no evidence before the court to show that he has asked to be heard as a witness in this case; that the defendants are entitled under the law to two days' notice, if residents of the parish, of a service on them, and notice to hear testimony must be given two days in advance of the hearing of testimony. And the law provides, if they be non-residents, that they are entitled to ten days' notice. That the accused in this case are non-residents of the parish of Orleans, that they have at no time received notice that they were to appear here to-day for the purpose of hearing the testimony of this one witness; that there is nothing in the record to show that any application was made to the court and notice given the defendants and district attorney by the witness, and for these reasons counsel for the defendants objects to the hearing of the testimony of said witness at this time." To which the court ruled.

"Which objection the court overrules for the reason that
121 the objections urged in the act quoted, apply only to persons detained in jail, as what is commonly known as material witnesses, which does not apply to this witness, Paul G. Thebaud."

To which ruling of the court, defendants' counsel makes a note of objections as heretofore stated.

The witness, Paul G. Thebaud, was then put on the stand, and my objections noted; it was on the 21st day of January. The examination of the case did not take place until the 25th day of January, 1902.

And be it further remembered that in addition to the objections herein recited, counsel for these defendants urged the following further objections to the reading of the testimony of the witness, Paul G. Thebaud, as taken on the preliminary examination:

Because — the reading of the testimony of Paul G. Thebaud, a witness for the State, whom it is claimed is absent from the State, counsel for these defendants further object and say: That the reading of this testimony now to the jury is in violation of article 9 of the constitution of the State of Louisiana of 1898, which provides:

"The accused in every instance shall have the right to be confronted by the witnesses against him."

That the reading of said testimony of Paul G. Thebaud, as taken before the first city criminal court on the preliminary examination, is violative of said constitutional provision.

Furthermore, that the reading of said testimony of said alleged absent witness is not only violative of the constitution of the State of Louisiana, but is also violative of the Constitution of the United States, and the sixth article of the Constitution, as well as the fourteenth amendment of the Constitution of the United States. And, furthermore, these defendants object to the reading of said testimony because it was not shown that the witness, Paul G. Thebaud, is dead, insane, or sick, nor has it been shown that the witness is ab-

sent by the procurement of the defendants, or either one of them, and that the reading of said testimony would be in violation of these defendants' constitutional rights.

To which objection the court ruled as follows:

122 By the COURT: The accused through their counsel, object to the reading of the testimony of Paul G. Thebaud, taken before the first city criminal court on the grounds

That Mr. Paul G. Thebaud was not, at the time that his testimony was take.. in the first city criminal court a prisoner in jail; that he had not asked the court that his testimony should be heard; that there was no evidence before the court to show that he had asked to be heard as a witness in the case. That the defendants under the law were entitled to two days' notice if residents of the parish of Orleans of a service on them to hear the giving of the testimony, and that the law provides if they be non-residents, that they are entitled to ten days' notice. That the accused are non-residents of this parish, that they had at no time received notice that they were to appear on the day fixed to take the deposition of Thebaud for the purpose of hearing the taking of his testimony. That there was nothing in the record to show that any application was made to the court by the witness to have his deposition taken, and that no notice was given the defendant and district attorney by the witness of any desire on his part to have his testimony taken.

Second. That the testimony is not admissible in evidence, and cannot be read to the jury for the further reason, that they are entitled to be confronted with the witnesses against them in every instance, under article 9 of the constitution of 1898, and that they claim that privilege granted them by law; and at this time the further objection is made that the testimony cannot be read, because under article 9 of the bill of rights of this State, and article 6 of the Constitution of the United States, and the fourteenth amendment of the Constitution of the United States, the accused are entitled to be confronted with their witnesses at all times, and they claim this right at present to the reading of the testimony, on the ground that said testimony cannot be read, and that they have to be confronted

123 by the witnesses, unless it be shown that the witness is dead, insane, sick or absent by the procurement of the defendant or his counsel.

The first objections are based upon the provisions of act 124 of 1896. This act was intended and passed to give relief to a class of people who previously when detained in jail as material witnesses had to await the trial of the case for their release, when unable to furnish security for their appearance. It gives them a privilege which the State cannot deny them, and which limits their confinement to as short a period as is compatible with the proper administration of criminal justice, and does away with the cruel wrongs that those unable to furnish bond are made to suffer. The act has reference to this class of witnesses alone, and its provisions cannot be extended to any other class of witnesses not within its province.

Mr. Thebaud was not a detained witness, and therefore the notices required by the act are not required of him.

The objections raised to the reading of his deposition on that ground is not therefore well taken, and is overruled. But, it is objected that the accused had no previous notice of the taking of the deposition of Mr. Thebaud; that they were entitled to some notice, and that they having objected to the taking of the deposition at the time, the same should not be read to the jury.

By article 140 of the constitution of 1898, the judges of the city criminal courts are given jurisdiction as committing magistrates with authority to bail or discharge. They, therefore, had the power not only to examine into a case, in order to determine whether the State had made a sufficient showing to send the accused to a higher tribunal for trial, but in line with that power, they had the right to take the deposition of any material witness whenever in their judgment necessity demanded such exercise of power; to prevent a failure of justice.

The act providing for the organization of these courts does not direct that any notice should be given the accused before the taking of the deposition of a witness for the State. Under it these
124 witnesses may be examined at any time, provided that they, the accused be not deprived of those rights secured to them by art. 9 of the constitution of 1898 of being confronted with the witnesses against them, or the right to defend themselves; to have the assistance of counsel, to have compulsory process, for obtaining witnesses in their favor. Of none of these rights have they been deprived. They were confronted with the witness Thebaud, and they were ably represented by leading members of the bar. They suffered no injury and the objection must be overruled.

The last objection is that they are entitled to be confronted with the witness at the present trial, and that under article 9 of the constitution they cannot be deprived of that right. Article 9 of the present constitution of 1898 differs from that of 1879 in having the words "in every instance" added. Article 9 of the constitution of 1879 among other things provides:

"In all criminal prosecutions the accused shall enjoy the right to be informed of the nature and cause of the accusation, and to be confronted with the witnesses against him."

To this the three words "in every instance" are added, under article 9 of the constitution of 1898. Counsel argues that this means that in every stage of the proceedings that in so far as art. 123 of act 1898 provides for the reading of testimony of witnesses permanently absent from the State it is in conflict with the above quoted article of the constitution, and therefore inoperative. The words "in every instance" do not mean in my opinion, in every stage of the proceeding, but rather in every case, wherever a witness is to be examined. It only emphasizes the right to be confronted, and otherwise adds no conditions to the provisions of article 8 of the constitution of 1898. Whatever may be my own private or

personal opinion as to the right of reading testimony of witnesses permanently absent from the State, without the procurement of the party against whom it is directed, may be, the question has entered the domain of "*stare decisis*," and under the well formulated
125 decisions of our supreme court on that point, I hold the objection not well founded, and I allow the testimony to be read.

To the ruling of the court, counsel representing the accused reserved *their* bill of exception, and makes a note of his objections now, and makes a part of his bill the testimony heard, together with the judge's reasons for overruling the objection herein.

And be it further remembered, that after the overruling of the objections herein, the court permitted the testimony of said Paul G. Thebaud, taken in the first city criminal court, to be read to the jury and offered against these defendants; to all of which counsel excepted, and now tenders this his bill of exception for signature and prays that the same be made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

126 Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 5.

Be it remembered that on the trial of the above-entitled and numbered cause, the court having overruled the objections made by defendants' counsel to the admission and reading of the testimony of the witness, Paul G. Thebaud, and Edward Kern, alias Manners, which said testimony and evidence was taken in the said first city criminal court, counsel for these defendants then and there filed a plea to the jurisdiction of this court, on the grounds that the said testimony of the witness, Paul G. Thebaud, shows that the jewelry herein charged to have been stolen from him had been stolen in the city of New York, and that the perpetrator of said crime was Edward Kern, Jr., and not these defendants;

That the testimony of said Paul G. Thebaud furthermore showed, that the said Edward Kern, Jr., alias Manners, was in his employ at the time that he committed the offense, in the State of New York; that he did not know the accused; that he had never seen them; and that the person who committed the larceny was the said Ed-

ward Kerns, Jr., and that the larceny was committed out of the jurisdiction of this court and out of the State of Louisiana, and is evidenced by the said testimony, which is as follows, to wit:

PAUL G. THEBAUD, sworn for the State, deposes as follows:

127 Direct examination by the STATE:

Q. Where do you live?
A. New York city.
Q. When did you come to New Orleans?
A. Last Saturday night.
Q. When do you expect to leave?
A. I want to go home tonight, very much.
Q. Do you know when you will return to this city?
A. I don't expect to return here.
Q. Kindly examine these articles and select those that are your property, if any of them are.
A. This travelling case is mine.
Q. What is the value of that?
A. I couldn't tell you.
Q. Can't you approximate it?
A. About ten or twelve dollars, fifteen dollars, something like that. This pipe is worth about fifteen dollars; that is mine. That watch fob is worth about thirty dollars. This knife here, I could not teld you what that is worth exactly, about three or four dollars. These razors are not mine. If my memory holds, I bought the case and didn't use it, but the razors are not mine.
Q. What is that case worth?
A. I can't tell you the value of these things, gentlemen; I am not a pawnbroker; perhaps one dollar and a half. There is a set of studs, I couldn't value those; they look like amethysts; I should think twenty or twenty-five dollars. Those I don't know what they are worth; I believe they are worth some two hundred dollars or more, a couple of pearl shirt studs. These things I could not value them at all.

By the COURT:

Q. Take them up one by one.
A. Here is a frog pin; I should imagine that was worth—I couldn't tell you; that was a present to me—perhaps one hundred dollars. One crown pin, about twenty-five dollars; another frog on ball, about ten or fifteen dollars; this pin, about forty dollars; here is a pin with red stones, worth about fifteen dollars; here is a golf pin, about two or three dollars; here is another worth two or three dollars. Fifty pins here—I should think they would average between fifteen and twenty dollars apiece. These three pieces
128 here, two ladies' belt pins and a brooch, possibly fifty dollars for the three pieces, more or less, perhaps. There is a couple

of pearl sleeve links; I should imagine they are worth a couple of hundred dollars.

Q. They are your property?

A. Yes, sir. Here is a ring with a watch in it; it is an antique; say fifty dollars. Here is second lot of scarfpins, fifty-three, about ten dollars apiece, perhaps; I don't know.

Q. Are they worth three and a half?

A. I don't care, anything; put down one hundred and fifty dollars for the lot. Here is a watch worth probably five dollars. Here is a little locket perhaps worth five or six dollars. This scarf holder is worth a couple of dollars. There are three studs; I suppose they are worth a dollar apiece. Here is a fox's head worth seven or eight dollars, I suppose. Here is another scarf holder, worth a couple of dollars. These scarf holders are worth about two dollars apiece, I suppose. These cuff links are worth about ten dollars. Here are a couple of shirt buttons worth twenty-five cents apiece, I suppose. Here some vest buttons, fox's heads, worth about sixty-five dollars. These buttons, green stones, I should think are worth twenty or twenty-five dollars. This box of cartridges is mine. This toilette set is part of the bag.

Q. Whose bag is that?

A. My bag.

Q. What is the bag and toilette set worth?

A. I guess about seventy-five dollars.

By the COURT:

Q. Whose silver box is that?

A. It belongs to my wife.

Q. These articles that you have mentioned are your property?

A. Yes, sir.

Q. Do you know how they got away?

A. I know that they were stolen from me in New York State; further than that, I came down here and found the man that robbed me of those thing. I know nothing of anything else in the matter except hearsay.

Q. You say that these things were taken from you in New York State?

A. New York city.

Q. Do you know a party by the name of Manners?

A. I don't.

129 By Captain HENRIQUES: I object, we are not trying Manners; we have nothing to do with Manners, and the question is irrelevant.

By the COURT:

Q. Do you know a party by the name of Manners?

A. I never heard of him.

Q. When did you first see this property after it was stolen from you?

A. Yesterday morning, over at Gretna, at the sheriff's office.

Q. Who showed it to you there?

A. The sheriff or his son.

Q. That was the first time you had seen it since it was stolen?

A. Yes, sir.

Q. This property that you have identified in court is the same property that you saw over there, and is the same property that was stolen from you?

A. Yes, sir.

Cross-examination by Captain HENRIQUEZ:

Q. Mr. Thebaud, do you know these two gentlemen sitting here?

A. I do not.

Q. Were they ever in your employ?

A. Not as far as I know.

Q. Is there any indictment or any criminal prosecution pending in New York for the larceny of this property?

A. I got an order from the court for this man.

Q. Have you got it?

A. It was served on the sheriff; it is an indictment and bench warrant, I believe.

Q. With a warrant issued from the judge before whom the indictment was found, I presume?

A. Yes, sir.

Q. Against whom was this indictment presented?

A. Edward Kern the younger.

Q. Is Edward Kern either of these two men?

A. No, sir.

Q. All of this property that you have enumerated here, was stolen from you?

A. It was, and those two pieces belong to my wife.

Q. And it was stolen from you in the State of New York?

A. Yes, sir.

Q. Where was it stolen from?

A. No. 158 Madison avenue.

Q. That is your home?

A. That is my home.

Q. You cannot be mistaken about this being your property?

A. As far as my knowledge, I believe it is my property.

130 Q. Was Kerns in your employ?

A. He was.

Q. When did he leave your employ?

A. Either the 29th or 30th of December, the day he stole these things.

Q. Under what circumstances did he steal this property? How did he come to get it?

A. He was my valet, and he had access to it in my closet; and I sent him up the country in the morning; I was going out to spend Sunday in the country; Saturday morning I sent him up, and he came back, and went to the house in the afternoon, as far as I know; and Sunday night I found these things missing. When I went up the country Saturday night, he had taken these things away from the city house, and I was to stay with a friend of mine in the country; and he took my wife's things, which I got most of them back from White Plains, two or three miles outside of the city, and he brought those things back to the city with him.

Q. Were there other articles stolen from you besides this?

A. Yes sir.

Q. What did they consist of?

A. They consisted of the same line and maybe other things that I have not found yet. This ring with the watch in it, I never knew until a few days ago that it was gone.

Q. Did you ever search in any of the pawn-brokers' places here?

A. No, sir.

Q. Did you lose any diamonds either set in scarf pins or any others besides those, and besides what you have recovered in New York city?

A. Yes, sir.

Q. There were other articles missing that you have not yet recovered?

A. Yes, sir.

Q. They were all stolen at the same time by this man?

A. I couldn't say that because I was not with him, and he had a half of Saturday, and then he came to me the next morning; I went out in the morning at eight o'clock, and he took my wife's things from the country, and I haven't seen him since. I didn't discover the robbery until seven o'clock that night.

Q. Have you seen this man since you came to New Orleans?

A. Yes.

Q. When did you see him, and where?

A. Over at the Gretna jail yesterday, and I have just seen him in this room a few minutes ago.

131 Q. That is the man who robbed you?

A. To the best of my belief.

Q. He is a man by the name of Kerns?

A. Edward Kern, the younger.

Q. How long have you had him in your employ?

A. About two months.

Q. Did you ever know him by the name of Manners?

A. I never did.

Q. What did he tell you his name was?

A. Edward Kern, Jr.

Q. Did you know his parents?

A. I did.

Q. Are they in your employ?

A. Not now.
Q. They were?
A. Yes, sir; I engaged him at the same time.
Q. Were their names Kerns?
A. Yes, sir.
Q. Is he the son of that man and woman?
A. Supposed to be.
Q. They acknowledged him as their son?
A. They said he was.
Q. That is the man Kerns that you saw over in the Gretna jail?
A. Yes, sir.

And be it further remembered, that the testimony purporting to have been taken on the preliminary examination of T. E. Manners, alias Edward Kern, Jr., furthermore discloses the fact that no property was stolen from him, and that none of the articles and property charged and alleged in the information herein, was stolen in the city of New Orleans, as is evidenced by his testimony admitted on the trial hereof, and which purports to have been taken on the preliminary examination herein, and is as follows, to-wit:

T. E. MANNERS, sworn for the State, deposes as follows:

132 Direct examination by the STATE:

Q. When did you arrive in this city, Mr. Manners?
A. I arrived in this city Monday evening, one week ago.
Q. Are you the same T. E. Manners who was stopping at the St. Charles hotel on the 14th of this month?
A. Yes, sir; that is the day I arrived.
Q. Just state whether or not any property belonging to you was stolen from you, while you were staying at the St. Charles hotel.
A. There was.
Q. Will you tell the court what that property consisted of?
A. Clothing, shirts, collars, cuffs, and handkerchiefs, socks, brushes, and little private articles.
Q. Where did you leave those things?
A. In my room.
Q. I mean, were they scattered about the room, or did you have them in a satchel, or valise, or something of that kind?
A. I refuse to answer that question.

By Captain HENRIQUEZ: We object to this testimony; we are not charged with stealing clothing; we ask that the testimony be stricken out of the record.
By the COURT: Objection sustained.

By the STATE:

Q. Besides this clothing, was there anything else stolen that day?
A. I refuse to answer.

Q. On what ground?

A. On the ground that I might incriminate myself.

Q. Are you acquainted with the parties at the bar, Kline and West?

A. I am not acquainted with the parties.

Q. Do you recollect having seen either or both of them before the 14th of January?

A. I cannot positively say that I have seen either one of them before the 14th of January. I thought I had seen one of them, but I was not sure.

Q. Which one did you think you had seen before?

A. I thought I had seen Kline before.

133 Q. But you were not personally acquainted with him on this date?

A. No, sir.

Q. Did you ever have any dealings with either of them?

A. No, sir.

Q. Did you give Kline or West, or both of them, anything?

A. I haven't given them anything.

Q. Did you authorize them to take anything from the St. Charles hotel?

A. I did not.

Q. Do you recollect having seen either of them at the St. Charles hotel?

A. I do recollect having seen one of them at the St. Charles hotel.

Q. Which one?

A. The man by the name of Klein.

Q. When did you next see him?

A. I seen him next over in the Gretna jail.

Q. Of course you don't know how he got there; I mean of your own personal knowledge?

A. No, sir.

Q. Where were you on the 14th of January?

A. On the night of the 14th of January I slept at the St. Charles hotel.

Q. Did you make any complaint to the police on the 14th?

A. I did make a complaint.

Q. What time was it when you complained, Mr. Manners?

A. I cannot tell; it must have been about half-past twelve or one o'clock.

Q. Was that the night of the 14th, or early morning of the 15th?

A. Yes, sir.

Q. Where had you been that night?

A. I had been to theatre.

Q. After the theatre, and before you made this complaint, had you returned to the St. Charles hotel?

A. I had.

Q. How long did remain at the hotel?

A. Perhaps a half an hour or so.

Q. Did you make any complaint to anyone at the hotel?
A. Why, yes.
Q. Do you recollect to whom you made the complaint?
A. To the clerk.
Q. You don't know his name?
A. I don't.
Q. It was after making that complaint, that you came
134 to the police, or made your complaint to them?
A. They were the first ones to think of.
Q. Who do you mean by "them"?
A. The clerks, the men in the hotel.
Q. Where did you go to make your complaint to the police?
A. I did not really make any formal complaint, I just went to the chief's office and we tried to find out if they knew anything about it.
Q. You came to the chief's office, is that right?
A. Yes, sir.
Q. Who did you see in the chief's office? do you know?
A. Well, I don't know anything about that.
Q. I believe I neglected to ask you your occupation.
A. I am a clerk.
Q. Will you tell us for whom?
A. I decline to answer that.
Q. On what ground?
A. On the same ground as before.
Q. Look at this satchel or grip, Mr. Manners, and tell me if you can identify it?
A. I decline to answer.
Q. On what ground?
A. On the same ground.

Be it further remembered that on the trial hereof, the assistant district attorney without the necessity of formal proof being offered thereto, admitted that the said T. E. Manners was taken back to the city of New York, on a requisition from the governer of said State, and wherein he was charged with the stealing of this identical property in the State of New York, which said property is now charged in this information to have been stolen by these accused.

And be it further remembered that after the State had read the deposition of said Paul G. Thebaud and Edward Kern before the said first city criminal court, the said plea to the jurisdiction, — filed herein at that time, and which plea to the jurisdiction is in the words following, to wit:

"And the said defendants, Robert L. West and George I. Kline, now on trial, the evidence for the State having been heard, say:
135 "That the court here ought not to take further cognizance of the offense herein set forth in the said information, because, that the evidence elicited herein shows conclusively that this honorable court is without jurisdiction in the premises, for the

reason that under the evidence here offered on this trial, and which is on file and is part of the record herein, the alleged larceny is shown to have been committed out of the jurisdiction of this court, and by said evidence, it is affirmatively proven that if there was any larceny committed, it was committed in the city of New York, and by one Edward Kerns, Jr.

"And for further reason why this court has no jurisdiction, these defendants aver that the subject matter of the offense as herein shown by the evidence was committed in a foreign jurisdiction, and that the venue as laid in the information has not been proven on the trial hereof.

"Wherefore, the said Robert L. West and George I. Kline, the defendants herein, do now pray judgment, and that this honorable court ought not to take further cognizance of the information and the matters therein set forth, and that they ought to be discharged and dismissed from the premises.

"And the said plea having been argued to the court, the court overruled the plea, for the following reasons, namely:

"By the COURT: After the State had read the deposition of P. G. Thebaud and Edward Kern, otherwise known as Manners, taken before the first city criminal court, the accused filed a plea to the jurisdiction of this court, founded upon the ground that the testimony of Thebaud shows that the jewelry herein charged to have been stolen from him by the accused at the bar, had been stolen from him in the State of New York by Edward Kern, Jr., in December, 1901. The State has not closed its case, and whether it will establish hereafter the proper venue can only be determined by the testimony to be offered. If instead of Kline and West charged to have committed
the offense the information charge Edward Kern, Jr., with
136 the offense, and the asportation was shown to have taken
place in New York, there would be no doubt as to the force of the plea now filed, for our law does not recognize continuous asportation of property, and the taking in that case having been in New York, the offense would not exist in this State, by the mere transportation of the property from the place of the taking to this place. But the information does not charge Edward Kern, Jr., or Manners with the crime, but George I. Kline and Robert L. West.

"It is elementary in law that a thief may steal from a thief, the dominion over the property by the first thief being by fiction of law considered as that of the owner. Kline and West can therefore, be charged with having stolen property from P. G. Thebaud in this city on the 14th day of January, 1902, notwithstanding that the property had in December 1901, been stolen by Kern, otherwise known as Manners, from Thebaud in New York. If the property stolen prove to have been stolen from Kern in this city on the 14th of January, 1902, the charge would hold under the law, notwithstanding the fact that the property had in December 1901, been stolen by Kern from Thebaud, in the State of New York.

"The accused on a previous day filed a plea to the jurisdiction of this court, founded on the same grounds, which plea had been referred by the court to the merits of this case. Both pleas are now considered by the court, and for the reasons given they are overruled, reserving to the accused the right to file pleas to the jurisdiction of the court hereafter, should occasion demand or justify it."

To the ruling of the court counsel for the accused then and there excepted, and now tenders this, his bill of exceptions to the court, and prays that the same be filed and made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

137 Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 6.

Be it remembered that on the trial of the above entitled and numbered cause, counsel representing these accused requests the court to give a written charge to the jury herein; that in compliance with said request the court did give a written charge to the jury, and after the general charge had been delivered, counsel requested the court to give the following special charge among others.

"The court instructs the jury that their personal opinions as to the facts not proven cannot be considered as the basis of their verdict. The jury may believe as men that certain facts exist, but as jurors they can only act upon the evidence introduced on the trial, and from that evidence, and that evidence alone, the jury must form their verdict, unaided, unassisted, and uninfluenced by any opinion or presumptions not founded upon the testimony."

Which said charge the court declined to give, to which counsel for the accused reserved a bill of exceptions, which he now tenders for signature, and prays that the same be filed and made part of the record herein.

*Per Curiam:* The general charge covers this request in every particular and is referred to and made part of this bill.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.

(Signed) A. S. DESMOND,
*Minute Clerk.*

138 Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No. 7.*

Be it remembered that on the trial of this cause on the 4th day of April, 1902, the accused George I. Kline, being a witness in his own behalf, was examined by his counsel and testified as follows, to-wit:

Q. Mr. Kline, do you know this man who gave his name as Manners?
A. Yes, sir.
Q. Where did you become acquainted with him?
A. I met him at the race track.
Q. Did you ever meet him before that?
A. Yes, sir.
Q. Where did you meet him?
A. In Chicago.
Q. Did you have any conversation with him at the race-track?
A. Yes, sir.
Q. How did they come about?
A. He asked me for a match to light a cigarette.
Q. Did he come up to you?
A. Yes, sir; we were standing close up to each other, and he addressed me.
Q. What did he say?
A. He said: "Will you let me have a match to light a cigarette"?
Q. What did you say?
A. I gave him the match.
Q. Then what happened?
A. He told me that he had come down here and was playing the races, and was "broke," that he was in hard luck, and he told me he was staying at the St. Charles hotel, and he asked me if I would not go there with him and pay his bill, and get his things.
Q. Did you go there?
A. Yes, sir.
Q. Did you pay his bills?
A. Yes, sir.
Q. Did you ever go to his room with him?
A. Yes, sir.
Q. Who took you there?
A. He did.
139 Q. Did he point out the things he wanted you to take?
A. Yes, sir.

Q. Is that the reason you took them?
A. Yes, sir.
Q. Because he authorized you to do it?
A. Yes, sir.

After the foregoing direct examination of the said witness George I. Kline, which was then and there sworn in his own behalf; that after testifying as above the said witness was turned over to the State for cross examination, whereupon the assistant district attorney propounded the following questions, which, with their answers are herein set out, namely:

Cross examination by Mr. MOONEY:

Q. Where did you take those things?
A. I was to take the things and meet him at the depot.
Q. What depot?
A. The I. C.; I believe they call it the Valley.
Q. At what time?
A. He told me to meet him and take the 10:45, but the train left at 10:25.
Q. What did you do then?

To which last question counsel for the accused objected on the grounds: That this being a witness for the defense and one of the defendants testifying in his own behalf, the State must confine itself to what was brought out in the direct examination of the witness, or what was intimately connected with it; that the question asked and the answer attempted to be elicited from the witness was foreign to the direct examination and was in no way connected with the same, which objection the court over-ruled and permitted the question to be asked. To which ruling of the court counsel for these defendants then and there excepted and reserved their bill of exceptions, whereupon the witness continuing in answer to the question said:

"After he told me to take the things to the depot, why I went to the hotel and paid the bill.
Q. After you got to the depot what did you do?
A. I took a cab and left the depot.

140 To all of which questions and answers counsel for the defendant- then and there objected and excepted, and now tenders this, *their* bill of exceptions for signature, and prays that the same be made part of the record herein.

*Per Curiam:* The question was proper and closely connected with the testimony given by def't, and was admitted, it being part of the transaction narrated by the witness himself.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 8.

Be it remembered that on the trial of the above entitled and numbered cause, and after the evidence had all been heard, the court delivered its written charge which is part of the record herein, and which is made part of this bill, and after the court had charged the jury and before they had retired to deliberate upon this charge, counsel for these defendants objected and excepted to the following portion of the general charge, as not being warranted by the evidence, to-wit:

"When goods stolen are very shortly afterwards found in the possession of a man who is unable satisfactorily to show by
141 evidence in what manner he came by them, the presumption is that he is the person who stole them."

That said portion of the general charge herein excepted to was not warranted by the evidence offered on the trial herein, and that said portion of the general charge was misleading, and not a correct exposition of the law as applicable to this case; that the evidence which is found in the record herein did not warrant the court in delivering said charge to the jury, and the defendants, by their counsel now tenders this, their bill of exceptions and prays that the same be signed and made part of the record herein.

The evidence showed that the property was in possession of the accused shortly after it had been stolen from the St. Charles hotel. The evidence on behalf of the State was circumstantial. I refer to the charge given by me on the trial which is made a part of this bill.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Bill of Exceptions No.* 9.

Be it remembered that on the trial of the above entitled and numbered cause, the court in its general charge to the jury, charged as follows, to wit:

"Mere presence at the commission of a crime, or even sympathy with the criminal is not sufficient to make the party a princi-
142 pal; he must actually assist, encourage, aid or abet his accomplice in the perpetration of the crime."

That at the time the general charge was delivered and before the jury had retired, counsel for these defendants excepted to this portion of said general charge, on the grounds, that the same was not warranted by the evidence, and was calculated to mislead the jury, and counsel for these defendants now tenders this, their bill of exceptions and prays that the same be signed and made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed April 28th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

*Bill of Exceptions No.* —.

Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

Be it remembered that on the 26th day of May, 1902, the motion herein filed for a new trial, together with the supplemental motions for a new trial, which are in the record, and which are hereunto annexed and made part of this bill of exceptions, came on for hearing before section B of the criminal district court, parish of Orleans, and before the Honorable Frank D. Chretien, judge of said section B of said court.

And on the hearing and argument of the said motion and supplemental motions, the court then and there, for the reasons assigned, overruled said motion for a new trial, as well as the sup-

plemental motions which are now on file, and which as here-
143 tofore stated are made part hereof, and to the ruling of the court over-ruling and dismissing the said applications for a new trial, counsel for these defendants then and there excepted, reserved their bill of exception, and as part of said bill with leave of the court had and obtained, made the said original motion, the two supplemental motions for a new trial, together with the documents thereunto annexed a part of the bill, and which said bills of exception the said defendants now tender to the court for signature, and pray that the same be filed and made part of the record herein.

(Signed) FRANK D. CHRETIEN, *Judge.*

Filed May 28th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

144 Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Motion for a New Trial.*

Hon. Frank D. Chretien, judge.

And the said defendants, Robert L. West and George I. Kline, jointly and severally by their counsel, Henriques and Dunn, come into court here, and now prays that the verdict of the jury herein rendered against them may be set aside, and a new trial granted, for the following reasons, to-wit:

First. Because the verdict of the jury herein rendered is clearly contrary to the law and the evidence.

Second. Because that on the trial hereof, the State failed to prove the venue as alleged in this information, but, on the contrary, the evidence clearly showed that no larceny as charged in this information was committed within the jurisdiction of this honorable court; but, on the contrary, the evidence established the fact that if a larceny was committed, it was committed by one Edward Kern, Jr., otherwise known as T. E. Manners, and was committed by the said Kern, alias Manners, in the city of New York.

Third. Because the *corpus delicti* was not affirmatively proven in this case, but, on the contrary, under the evidence admitted by the court, being the testimony of one T. E. Manners, alleged to have been taken before the first city criminal court on the preliminary hearing hereof, the said Kerns or Manners did not affirmatively show nor was there any proof to show that these accused had stolen any property, but, on the contrary, the evidence of these defendants,

which is now hereunto annexed and made a part of this motion for a new trial, conclusively shows that no larceny was committed by them; and now mover annexes the said testimony of said defendants, and makes same a part of this motion for a new trial.

Fourth. Because the court erred in over-ruling these de-
145 fendants' plea to the jurisdiction of the court; that there was no evidence offered on the trial hereof to show a larceny had been committed within the jurisdiction of this court.

Fifth. Because the information herein charges that the property stolen was the property of one Paul G. Thebaud, and the said Paul G. Thebaud, under the evidence submitted to the jury, was positive in stating that the person who had committed the larceny was Edward Kern, Jr., and that said larceny was committed in the State of New York.

Sixth. Because the jury, in deliberating upon this case, failed to consider the law applicable thereto, in this, that the *corpus delicti* of the crime must be proven beyond all reasonable doubt. In other words, that the property was stolen, and that these accused are the persons who stole said property; that the evidence does show, by the owner of said property, Paul G. Thebaud, that the property was stolen from him, and that he knew that said property was stolen in the State of New York; that the witness, Edward Kern, Jr, or Manners, never did state, in the alleged evidence given before the first city criminal court on the preliminary examination, that the property, goods and chattels which are made the subject-matter of this offense, as charged and specified in the information herein, were ever stolen from him, but, on the contrary, when asked if said property was stolen from him, refused to answer the said question, on the ground that an answer to that question might incriminate him.

Seventh. That the jury, in deliberating on this case, failed to give the accused, and each one of them, the benefit of every reasonable doubt which under the evidence they were entitled to. That under the evidence there was a reasonable doubt which the jury withheld from these accused, and which, under the law, they were entitled to.

Eighth. Because this honorable court erred in over-ruling
146 the plea to the jurisdiction, in this, that the matter then submitted by said plea, and in order to give this court jurisdiction of the case, was, whether the property charged in the instant information was stolen within the jurisdiction of this court, or whether the said property had been stolen in another jurisdiction—to wit, in the State of New York; that by the evidence of Paul G. Thebaud, admitted on the trial hereof, over the objection made by these defendants, it was conclusively proven that said property was stolen in the State of New York, and was stolen by one Edward Kern, Jr, otherwise known as Manners; and that the venue, as laid in this information, was not proven, but, on the contrary, it was affirmatively shown that the larceny was not committed in the parish of Orleans; and because, by the evidence of the witnesses, George I. Kline and Robert L. West, they affirmatively prove that

Edward Kern, Jr, otherwise known as Manners, had entrusted them with the said property, which is the subject-matter of the present information, and that they obtained the same from him, and that the same was not feloniously stolen.

Ninth. Because the court erred in permitting the evidence and testimony of Paul G. Thebaud and Edward Kern, Jr., alias Manners, purporting to be taken before the first city criminal court, to be read to the jury over the objection made by these defendants, in violation of their constitutional rights, and in violation of the bill of rights of the constitution of this State of 1898, which provides:

"The accused in every instance shall have the right to be confronted with the witnesses against him. He shall have the right to defend himself, to have the assistance of counsel, to have compulsory process for obtaining witnesses in his favor."

That the right of confrontation was denied these defendants; that their constitutional rights, guaranteed to them both by the constitution of this State and the Constitution of the United States, was set aside; that the admission of said evidence was in violation of the rights of these appearers.

147 Tenth. And for further reason why a new trial should be granted these defendants, they allege that the protection guaranteed to them by the constitution of this State, namely, article 9 of the bill of rights of said constitution, was denied them; that they were tried and convicted by a denial of the protection guaranteed to them by said article of the constitution.

Eleventh. Because the jury who deliberated on the trial hereof, failed to give and could not have considered the evidence offered on behalf of these defendants, to-wit, the testimony of the witnesses, Robert L. West and George I. Kline; that by their testimony it is affirmatively shown that they committed no larceny, but, on the contrary, the property made the subject-matter of the alleged offense, and as charged and contained in the instant information, was delivered to them by Edward Kern Jr.; and that said property was not feloniously stolen, taken, or carried away.

Wherefore, the said defendants, Robert L. West and George I. Kline, pray judgment, and that by the court here they may be granted a new trial, and that notice hereof be given to the district attorney.

(Signed) HENRIQUEZ & DUNN,
*Att'ys for Def'ts.*

Filed April 28th, 1902, and fixed for hearing on Friday, May 9th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

MAY 26TH, 1902.

Heard of, submitted, and by the court, for the written reasons filed, is refused.

(Signed) A. J. DESMOND,
*Minute Clerk.*

148 *Supplemental Motion for a New Trial.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

TUESDAY, *May 13th*, 1902.

Pursuant to adjournment, court met this day at 10.30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dist. att'y.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

Messrs. Adams & Otero, of counsel for the defendants, in case No. 31923, this day presented to the court a supplemental motion for a new trial in said numbered case, which motion was ordered filed and fixed for hearing on Friday, May 16th, 1902.

149 *Supplemental Motion for a New Trial.*

Criminal District Court, Sec. B.

THE STATE OF LA.
*vs.*
WEST and KLINE. } No. 31923. Information for Grand Larceny.

And now into court come the said Robert L. West and the said George I. Kline, each on his own behalf, and for additional cause why the verdict of the jury herein rendered and recorded should be set aside, and a new trial granted, they aver and urge that, in permitting to be read in evidence at the trial the deposition of one Paul G. Thebaud (who at the time, was absent from this jurisdiction and was then and is now within the State of New York of which he is a resident) the court denied them, the said Robert L. West and the said George I. Kline the rights, advantages and protection accorded them by article 9 of the constitution of the State of Louisiana in the guarantee that "the accused, in every instance shall have the right to be confronted with the witnesses against him,"

and that they, the said Robert L. West and the said George I. Kline were, by the said action of the State of Louisiana and of its court and prosecuting officer, deprived and divested of the privileges and immunities vouchsafed them as citizens of the United States by the provisions of the fourteenth amendment to the Constitution of the United States, in that they were denied the benefit of due process of law.

(Signed) ROB'T L. WEST.
" GEO. I. KLINE.

150 Robert L. West and George I. Kline being duly sworn, each on his own behalf deposes and says that he is a citizen of the United States, and that he is advised and believes that the allegations in the foregoing supplemental motions contained are true.

(Signed) ROB'T L. WEST.
" GEO. I. KLINE.

Sworn to and subscribed before me this 13th day of May A. D., 1902.

(Signed) RICHARD BLACH OTERO,
[SEAL.] *Notary Public, Parish of Orleans.*

MAY 26TH, 1902.

Heard of and submitted, and by the court refused for written reasons filed.

(Signed) A. J. DESMOND,
*Minute Clerk.*

Filed May 13th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

151 Criminal District Court, Parish of Orleans.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

Honorable Frank D. Chretien, judge:

Now into court here comes Robert L. West and George I. Kline, the defendants herein by their undersigned counsel, and jointly and severally the said defendants pray leave to file this supplemental motion for a new trial herein.

And, herein reiterating and affirming all and singular the allegations in their original motion now on file, and, in no way waiving same, or any part thereof, for further and additional reasons why

the verdict of the jury ought to be set aside, and why they, and each one of them, should be granted a new trial, say:

That on their trial before this honorable court the pretended testimony and evidence of Edward Kern, Jr., was read to the jury, and is now on file and in the record; that on said date and at said time and when these defendants were on trial, said Edward Kern, Jr., was absent and did not testify orally on the trial hereof, but that his said testimony was read to the jury, and that from said testimony, among the other testimony offered on the trial hereof, these accused were convicted.

And these defendants now say: that at the time of their trial said Edward Kern, Jr., as they verily believe and are informed, and have reason to know, was then a prisoner in jail in the State of New York, in which State and city the said Edward Kern, Jr., was then and there held on an indictment for grand larceny in the first degree, and second for receiving stolen property, to-wit: that the said Edward Kerns, the younger, was charged in an indictment presented and returned into the court of general sessions of the peace against him by the grand jury of the county of New York, and said indictment charged the said Edward Kern, the younger, substantially with having on the 29th day of December, in the year of our Lord one thousand, nine hundred and one, two
152 hundred and seventy-five scarf pins of the value of $10.00 each; four pearl studs of the value of $2.50 each; two pair of cuff buttons of the value of $25.00 each; one locket of the value of $2.50, etc. of the goods, chattels, and property of one Paul G. Thebaud; feloniously did steal, take and carry away, and in the second count of the said indictment, as aforesaid, said Edward Kern, Jr. was charged with criminally receiving stolen property, namely, the same property as described and set forth in the first count of the said indictment, and on the day and in the year as therein set forth, and that said larceny and receiving stolen property, is alleged and charged to have been committed in the city of New York, county of New York in the borough of Manhattan.

And these defendants, Robert L. West and George I. Kline, aver and represent to this honorable court here, that the said Edward Kern, Jr., did on the 14th day of April, 1902, before the Honorable Warren M. Foster, judge of the court of general sessions of the peace of the city and county of New York, on the indictment therein pending against him, withdraw his plea of not guilty, and pleaded guilty of grand larceny in the first degree, and that the said Edward Kern, Jr. was then and there sentenced to be imprisoned in the State prison at hard labor, for the term of four years and six months, all of which will more fully appear by the annexed certified copy of the indictment and other certified copies of the plea which were filed in the court of the general sessions of the peace, in the case entitled State of New York against Edward Kerns, Jr. which is

hereby annexed and made part of this supplemental motion for a new trial.

And the said defendants further represent and aver, that the said Edward Kern, Jr., named in the said indictment, and who pleaded guilty to the charge therein contained, and who was sentenced to suffer imprisonment for the term of four years and six months, as set forth in the annexed papers, was the self-same person, who testified and gave evidence against your relators in the first city criminal court of New Orleans on their preliminary exami-
153 nation, and is the same Edward Kern, Jr. whose evidence was taken before the said first city criminal court, as aforesaid, and was read to the jury on the trial of this cause.

And further, these defendants say, that the said Paul G. Thebaud, whose property is alleged to be stolen by Edward Kern, Jr., in the said indictment made part hereof, is the same person whose property it is alleged in the instant case was feloniously taken, stolen and carried away by these defendants in the city of New Orleans, and that the property which it is alleged that these defendants feloniously stole, took, and carried away is the identical and same property whereof said Edward Kern, Jr., is charged in the said indictment herein made part hereof, and to which he pleaded guilty, in the State and city of New York.

And for further reasons why these defendants ought to be granted a new trial, they say, that since the former trial they have discovered new, important and material evidence, and that although reasonable diligence was used it was impossible to obtain same before; that the said evidence is material in its object and not merely cumulative, corroborative, or collateral; that it was impossible to obtain the said evidence on the trial of this cause, because the witness was then absent from the State, and defendants did not know at the time what said evidence would be; that they have only ascertained same since their conviction; that the said evidence goes to the merits of the case, and does not rest on merely technical defense; that said evidence was only obtained and known to these defendants three days since, and consists of the affidavit of Edward Kern, Jr., whom these defendants represent would testify that he (Kerns) authorized George I. Kline to remove and take possession of all the property and effects which he had in the room No. 859 of the St. Charles hotel, in the city of New Orleans, and to meet him in Atlanta with the same, and that defendants as part of this supplemental motion for a new trial annexed said affidavit of the said Edward Kern, Jr., and makes same part of this supplemental motion for a new trial.

154 And these defendants further say, that this application for a new trial is made solely in the interest of justice, and that justice may be subserved in the premises; that they were unable to obtain said testimony on their trial; that they, or either one of them did not know of the existence of said testimony, and only

ascertained the same upon receiving the affidavit which is hereunto annexed.

Wherefore, the said defendants pray judgment, and that a new trial may be granted herein, and for all other and general relief in the premises, as the nature of the case suggests and warrants.

(Signed) HENRIQUES & DUNN &
" ADAMS AND OTERO,
*Of Counsel.*

*Affidavit.*

Robert L. West and George I. Kline, the defendants herein, being duly sworn, depose and say: That the foregoing and supplemental motion for a new trial has been read and explained to each one of them, and that the allegations therein are true and correct to the best of their information, knowledge and belief.

(Signed) ROBERT L. WEST.
" GEO. I. KLINE.

Sworn and subscribed to before me on this 16th day of May, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

Filed May 16th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

155 No. 31923. Criminal district court, section "B." The State of Louisiana *vs.* Robert L. West and George I. Kline. Supplemental motion for a new trial. Filed May 16th, 1902. (Signed) A. J. Desmond, minute clerk.

May 26th, 1902.

Heard of and submitted and *and* by the court refused for the written reasons filed.

(Signed) A. J. DESMOND,
*Minute Clerk.*

156 STATE OF NEW YORK, }
*County of Westchester,* } *ss:*

Edward Kern, being sworn, says: Having heard that George I. Kline and Robert L. West have been convicted of stealing jewelry taken from the Saint Charles hotel, property of Mr. Paul G. Thebaud, I take this method of stating to all whom it may concern that I authorized Mr. George I. Kline to remove and take possession of all my property and effects which I had in room No. 859 of the Saint Charles hotel, and to meet me in Atlanta with same. Furthermore, I did not make this statement when I testified against George

I. Kline and Robert L. West, because I was afraid it might incriminate me.

(Signed) EDWARD KERN.

Witness to Kern:

(Signed) JAMES JACKSON.

Subscribed and sworn to before me the 5th May, 1902.

(Signed) H. C. WESTLAKE,
[SEALS.] *Notary Public for Westchester Co., N. Y.*

157 STATE OF NEW YORK, }
*Westchester County,* } ss:

I, Leslie Sutherland, clerk of the county of Westchester, and also clerk of the supreme court for the said county, the same being a court of record, do hereby certify that H. C. Westlake, before whom the annexed deposition was taken, was, at the time of taking of same, a notary public of Westchester county, dwelling in said county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court and county, the sixth day of May, 1902.

[SEAL.] (Signed) LESLIE SUTHERLAND, *Clerk.*

158 The People of the State of New York, by the grace of God, free and independent, to whom these presents shall come,
[SEAL.] Greeting:

Know ye, that we having inspected the files of our court of general sessions of the peace of the city and county of New York, holden at the building for criminal courts, in the borough of Manhattan of the city of New York, in and for the county of New York, do find a certain indictment and the minute of conviction thereon, there remaining of record in the words and figures following, to-wit:

159 At a court of general sessions of the peace, of the city and county of New York, holden in and for the county of New York at the building for criminal courts, in the borough of Manhattan of the said city, on Monday the 14th day of April in the year of our Lord one thousand, nine hundred and two.

Present: The Honorable Warren W. Foster, judge of said court of the county of New York, justice.

THE PEOPLE OF THE STATE OF NEW YORK
vs.
EDWARD KERN, THE YOUNGER.

On indictment for grand la rceny in the first degree, and receiving, etc., December 29th, 1901, feloniously did steal two hundred and seventy-five scarf pins, four pearl studs, two pairs of cuff buttons, and one locket, all of the value of four thousand and fifty dollars, goods, etc., of Paul G. Thebaud.

(Filed January 16th, 1901.)

The defendant by leave, etc., withdraws his plea of not guilty, and now pleads guilty of grand larceny in the first degree.

The defendant is arraigned at the bar.

The district attorney moves for judgment against the defendant.

It is thereupon demanded of the said Edward Kern, the younger, what he has to say, why judgment should not be pronounced against him according to law, whom nothing further saith unless as before he hath said.

Whereupon it is considered, ordered and adjudged by the court that the said Edward Kern, the younger, for the felony aforesaid, whereof he is convicted as aforesaid, be imprisoned in the State prison at hard labor for the term of four years and six months.

(A true extract from the minutes)

(Signed) EDWARD R. CARROLL,
*Clerk of Court.*

160 Court of General Sessions of the Peace in and for the County of New York.

THE PEOPLE OF THE STATE OF NEW YORK
*against*
EDWARD KERN, THE YOUNGER.

The grand jury of the county of New York, by this indictment accuse Edward Kern, the younger, of the crime of grand larceny in the first degree, committed as follows:

The said Edward Kern, the younger, late of the borough of Manhattan of the city of New York, in the county of New York, as aforesaid, on the twenty-ninth day of December, in the year of our Lord one thousand nine hundred and one, at the borough and county aforesaid, two hundred and seventy-five scarf pins, of the value of ten dollars each, four pearl studs of the value of two hundred and fifty dollars each, two pair- of cuff buttons of the value of twenty-five dollars each pair, and one locket of the value of two hundred and fifty dollars of the goods, chattels and personal prop-

erty of one Paul G. Thebaud, then and there being found, then and there feloniously did steal, take and carry away, against the form of the statute in such case made and provided and against the peace of the people of the State of New York and their dignity.

*Second Count.*

And the grand jury aforesaid, by this indictment, further accuse the said Edward Kern, the younger, of the crime of criminally receiving stolen property, as follows:

The said Edward Kern, the younger, late of the borough and county aforesaid, afterwards, to-wit: on the day and in the year aforesaid, at the borough and county aforesaid, two hundred and seventy-five scarf pins of the value of ten dollars each, four pearl studs of the value of two hundred and fifty dollars each, two pairs of cuff buttons of the value of twenty-five dollars each pair, and one locket of the value of two hundred and fifty dollars, of the goods, chattels, and personal property of one Paul G. Thebaud, by a
161 certain person or persons to the grand jury aforesaid, unknown, then lately before feloniously stolen, taken and carried away from the said Paul G. Thebaud, unlawfully and unjustly did feloniously receive and have, the said Edward Kern, the younger, then and there well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried away against the form of the statute in such case made and provided, and against the peace of the State of New York and their dignity.

(Signed) WILLIAM TRAVIS JEROME,
*District Attorney.*

Witnesses:

PAUL G. THEBAUD.

(186) No. I. B.
Counsel Levy and Unger.
Filed 16 day of Jan. 1902.
Pleads not guilty, Jan'y 28.
The People *vs.* Edward Kern, the younger.
Grand larceny first degree and received (section- 528, 530, 550, Penal Code)
Arr. & com.
Jan. 28th, 1902.

(Signed) WILLIAM TRAVIS JEROME,
*District Attorney.*

A true bill.
(Signed) CHARLES E. MERRELL, *Foreman.*

162 All which we have caused by these presents to be exemplified, and the seal of our said court to be hereunto affixed.

Witness, John W. Goff, Esq., recorder of the county of New York, and presiding judge of our said court of general sessions of the peace this sixth day of May, in the year of our Lord one thousand nine hundred and two, and of our Independence, the one hundred and twenty-sixth.

[SEAL.] (Signed) EDWARD R. CARROLL,
*Clerk of Court.*

I, John W. Goff, recorder of the county of New York, and presiding judge of the court of general sessions of the peace of the city and county of New York, do hereby certify that Edward R. Carroll, Esq., whose name is subscribed to the preceding exemplification, is the clerk of the said court of general sessions of the peace, duly appointed and sworn, and that full faith and credit are due to his official act, and I further certify that the seal thereto affixed is the seal of the said court of general sessions of the peace, and that the attestation thereof is in due form.

Dated at the borough of Manhattan of the city of New York, in the county of New York, aforesaid, this sixth day of May, 1902.

(Signed) JOHN W. GOFF,
*Recorder of the County of New York.*

I, Thomas L. Hamilton, clerk of the county of New York, do hereby certify that John W. Goff, Esquire, whose name is signed to the foregoing certificate, was, at the time of signing the same, recorder of the said county and justice of said court duly elected and sworn, and that his signature is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of the county of New York, the sixth day of May, 1902.

[SEAL.] (Signed) THOS. L. HAMILTON, *Clerk.*

Court of general sessions of the peace, county of New York. The People of the State of New York against Edward Kern, the younger. Exemplified copy of an indictment and conviction thereon.

163 Criminal District Court, Parish of Orleans, Section "B."

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

*Motion in Arrest of Judgment.*

Now after verdict and before sentence, the said defendants Robert L. West and George I. Kline, jointly and severally and herein assisted by their counsel, moves the court here that the judgment may be arrested for the following reasons, to-wit:

First. Because on the face of the record it affirmatively appears that the evidence of the witness- Paul G. Thebaud and Edward Kern, Jr., alias Manners, sworn as witnesses on behalf of the State, *were* read to the jury in violation of these defendants' constitutional rights; that no proper foundation had been laid for the introduction of the evidence of the said witness Edward Kern, Jr., alias Manners, in this; that in order to lay the foundation for the introduction of the evidence of the said Edward Kern, Jr., alias Manners, claimed to have been taken on the examination had before the first city criminal court, the assistant district attorney did on the trial hereof, place upon the witness stand, one L. T. Kirn, a deputy sheriff of the criminal district court; that said witness was placed upon the witness stand for the purpose of laying a foundation for the introduction and reading before the jury of the evidence of one Edward Kern, Jr. alias T. E. Manners, taken on the 21st day of January, 1902; and that the said L. T. Kirn, as aforesaid, testified as follows, to-wit:

L. T. KIRN, being first sworn did testify as follows:

By Mr. MOONEY:

Q. Did you have a subpœna for a party by the name of Kerns or Manners?

A. Yes, sir.

Q. How did that subpœna read?

A. It read "Left in the care of Mr. C. C. Luzenberg.

Q. I mean the name of the party on whom it was served?

A. Well, it read Edward Kern, alias T. E. Manners.

164 Q. Did you serve that subpœna?

A. I went to Mr. Luzenberg, and he told me he had nothing to do with this paper. I told Mr. King about it, and I was instructed to give it to Capt. Rennyson. I went to Capt. Rennyson and he said this man was not there—that he had left the prison the 25th of January, 1902.

Q. Mr. Kirn, you spoke of Capt. Rennyson?

A. Yes, sir.

Q. Do you know if he occupies any official position?

A. Yes, sir, captain of the parish prison.

Cross-examination by Capt. HENRIQUES:

Q. The only address you had for this man Kerns or Manners, or whatever his name was, was in care of Mr. Luzenberg?

A. Yes, sir, it was previous to——

Q. I am speaking about this, if you will just answer my questions you will have a great deal of time. Was there any address given except that in care of Mr. Luzenberg?

A. No, sir.

Q. Now then, who directed you to go to the parish prison?
A. Mr. King.
Q. Mr. King?
A. Yes, sir.
Q. He told you to make inquiry there?
A. Yes, sir.
Q. You saw Mr. Rennyson?
A. Yes, sir.
Q. And he is the captain of the parish prison.
A. Yes, sir.
Q. He told you what?
A. That Manners was not there; that he had left there on the 25th of January.
Q. Did he say where he had gone?
A. No, sir.
Q. Did he tell you whether he was in the city?
A. No, sir.
Q. Do you know whether he has left the State permanently or not?
A. I do not, sir.

That the foregoing was the only testimony offered in order to lay the foundation for the introduction of the testimony and evidence of the said Edward Kern, Jr., alias Manners; that nowhere does it appear by the testimony of said witness L. T. Kirn, deputy sheriff, that the said Edward Kern, Jr., alias Manners, was then permanently absent from the State of Louisiana; that the record discloses and such is the fact that no other evidence was offered for
165 the purpose of laying the foundation for the introduction of the testimony of said Edward Kern, alias T. E. Manners, and that, as a matter of law, there was error in permitting said testimony of said witness Edward Kern, Jr., alias Manners, to be read to the jury; that said error is patent upon the face of the record; and that these defendants and each one of them have been denied their constitutional rights in the premises, and they now say that for that reason the judgment herein should be arrested. (See Record pages —.)

Second. Because of the error apparent upon the face of the record, to-wit: that these defendants and each one of them, were denied their constitutional rights on the trial hereof, when the court permitted the testimony of Paul G. Thebaud to be read to the jury; that in order to lay the foundation for the introduction of the evidence of said Paul G. Thebaud, which said evidence was taken before the first city criminal court of the parish of Orleans, the State on the trial hereof, called to the witness stand for that purpose the following witnesses, to-wit: Felix Coutourie and L. T. Kirn; that the witness Felix Coutourie testified as follows, to-wit:

By Mr. MOONEY:

Q. Mr. Coutourie, do you know Paul G. Thebaud?
A. Yes, sir.
Q. Do you know whether he lives in the city of New Orleans; how long have you known Mr. Thebaud?
A. I made his acquaintance when he came to New Orleans.
Q. Do you know the family?
A. Yes, sir.
Q. Do you know that they live in New York city?
A. Yes, sir.
Q. Do you know where Mr. Thebaud is now?
A. To the best of my knowledge he is in New York at the moment.
Q. When did you see him last?
A. On the night he left for New York.
Q. What night was that?
A. I don't remember the date, but I accompanied him to the train that night.
Q. What train was that?
A. The L. & N.
Q. Do you know where he was going?
A. New York.
Q. Do you know whether he had a ticket for New York?
A. Yes sir.
166 Q. You saw him get on a train?
A. Yes, sir.
Q. Have you heard from him since?
A. Yes, sir.
Q. Where were the letters written from?
A. New York city.
Q. Where is Mr. Thebaud now?
A. I think he is in New York—I haven't heard from him in the last two weeks.
Q. Has he any residence in the State of Louisiana that you know of?
A. No, sir.
Q. Is he a resident of the city of New York?
A. Yes, sir.

Cross-examination by Capt. HENRIQUES:

Q. When did you hear from him?
A. About two weeks ago.
Q. You haven't heard since?
A. No, sir.
Q. You don't know where he is at this time?
A. No, sir.

L. T. KIRN, deputy sheriff, being duly sworn, testified as follows:

By Mr. MOONEY:

Q. Mr. Kirn, do you hold any position in the parish of Orleans?
A. Yes, sir.
Q. What is it?
A. Deputy criminal sheriff.
Q. Examine this slip of paper and tell me what it is?
A. It is a subpœna for Paul G. Thebaud, St. Charles hotel.
Q. Did you serve it?
A. I went there and made a diligent search for him, and left it in the hands of Mr. Cunningham, and Mr. Cunningham informed me that Mr. Thebaud had left this city since January 21st.

Cross-examination by Capt. HENRIQUES:

Q. Who is Mr. Cunningham?
A. One of the register clerks there who looked over the books for me.
Q. Did you make any further inquiry to find out if Mr. Thebaud was in New Orleans?
A. No, sir, he told me he was there, and had left for New York on the 21st.
167 Q. Did you make any other inquiry except to go to the St. Charles hotel, and get what information you could from this man Cunningham?
A. No, sir.
Q. You never went any other place?
A. No, sir.
Q. Do you know where he is now?
A. No, sir, only they told me he went to New York.
Q. In the month of January?
A. Yes, sir.
Q. Do you know where he is now?
A. No, sir.

Re-direct examination:

Q. When did they tell you that?
A. On the 26th day of March, the day the paper was issued.

Re-cross examination:

Q. They told you he had left when?
A. On January 21st.

After that testimony had been offered the assistant district attorney stated to the court:

"Now if the court please, we have shown by two witnesses that Mr. Thebaud is absent from the State, and I submit that sufficient

showing has been made under the law, and that we now have the right to read the testimony taken in the lower court. I now propose to read the testimony of Mr. Thebaud."

To which offer counsel for these defendants made the following objections:

Because that nowhere in the evidence which was offered to lay a foundation for the introduction of testimony taken or alleged to be taken before the committing magistrate, of the witness Paul G. Thebaud, is it shown that he is at this time out of the city of New Orleans this day, nor is there any evidence offered on behalf of the State to prove affirmatively that the witness Paul G. Thebaud is permanently absent from the State of Louisiana.

And that said objections were overruled by the court, to which counsel for these defendants at the time excepted and filed his bill of exceptions, which are now part of the record; that the court having overruled the objection may by these defendants, for the reasons stated and on file in the record, the testimony of said witnesses was then read to the jury and is as follows:

168 PAUL G. THEBAUD, sworn for the State, deposes as follows:

(By Capt. HENRIQUEZ, for the defendants:)

Q. Are you in custody now as prisoner?
A. No, sir.
Q. Are you detained under a bond as an important witness, or as a material witness in this case?
A. No, sir. I have been served notice to appear here in this court.
Q. You were not put under a bond to appear as a witness?
A. No, sir.
Q. Have you at any time ever made any application to the court to have your testimony heard?
A. No, sir.

Direct examination by the STATE:

Q. Where do you live?
A. New York city.
Q. When did you come to New Orleans?
A. Last Saturday night.
Q. When do you expect to leave?
A. I want to go home tonight, very much.
Q. Do you know when you will return to this city?
A. I don't expect to return here.
Q. Kindly examine these articles, and select those that are your property, if any of them are.
A. This travelling case is mine.

Q. What is the value of that?

A. I couldn't tell you.

Q. Can you approximate it?

A. About ten or twelve dollars; fifteen dollars, or something like that. This pipe is worth about fifteen dollars; that is mine. That watch fob is worth about thirty dollars. This knife here I could not tell you what it is worth, exactly, about three or four dollars. These razors are not mine; if my memory holds, I bought the case and didn't use it; but the razors are not mine.

Q. What is that case worth?

A. I can't tell you the value of these things, gentlemen; I am not a pawnbroker; perhaps one dollar and a half. There is a set of studs; I couldn't value those; they look like amethysts; I should think twenty or twenty-five dollars. Those I don't know what they are worth; I believe they are worth some two hundred dollars or more; a couple of pearl shirt studs. These things I couldn't value them at all.

169 By the COURT:

Q. Take them up one by one.

A. Here is a frog pin; I should imagine that was worth, I couldn't tell you; that was a present to me; perhaps one hundred dollars. One crown pin, about twenty-five dollars; another frog on ball, about ten or fifteen dollars. This pin, about forty dollars. Here is a pin with red stones, worth about fifteen dollars. Here is a golf pin, about two or three dollars; here is another, worth two or three dollars. Fifty pins here; I should think they would average between fifteen and twenty dollars apiece. These three pieces here, two ladies' pins and a brooch, possibly fifty dollars for the three pieces, more or perhaps less. There is a couple of pearl sleeve-links, I should imagine they were worth a couple of hundred dollars.

Q. They are your property?

A. Yes, sir. Here is a ring with a watch in it; it is an antique; say fifty dollars. Here is a second lot of scarf pins, fifty-three, about ten dollars apiece, perhaps; I don't know.

Q. Are they worth three and a half?

A. I don't care, anything; put down one hundred and fifty dollars for the lot. Here is a watch, worth, probably, five dollars; here is a little locket worth probably five or six dollars. This scarf-holder is worth a couple of dollars. There are three studs; I suppose they are worth a dollar apiece. Here is a fox head, worth seven or eight dollars, I suppose. Here is another scarf-holder, worth a couple of dollars. These scarf-holders are worth about two dollars apiece, I suppose. These cuff-links are worth about ten dollars. Here are a couple of shirt buttons worth twenty-five cents apiece, I suppose. Here are some vest buttons, fox's head, worth about sixty-five dollars. These buttons, green stones, I should think are worth twenty or twenty-five dollars. This box of cartridges is mine. This toilet set is part of the bag.

Q. Whose bag is that?
A. My bag.
Q. What is the bag and toilet set worth?
A. I guess, about seventy-five dollars.

By the COURT:

Q. Whose silver box is that?
A. It belongs to my wife.
170 Q. Those articles that you have mentioned, are your property?
A. Yes, sir.
Q. Do you know how they got away?
A. I know that they were stolen from me in New York State; further than that, I came down here, and found the man that robbed me of those things; I know nothing of anything else in the matter, except hearsay.
Q. You say that these things were taken from you in New York State?
A. New York city.
Q. Do you know a party by the name of Manners?
A. I don't.

By Capt. HENRIQUEZ: I object; we are not trying Manners, and the question is irrelevant.

By the COURT:

Q. Do you know a party by the name of Manners?
A. I never heard of him.
Q. When did you first see this property after it was stolen from you?
A. Yesterday morning, over at Gretna, at the sheriff's office.
Q. Who showed it to you there?
A. The sheriff or his son.
Q. That was the first time you had seen it since it was stolen?
A. Yes, sir.
Q. This property that you have identified in court, is the same property that you saw over there, and is the same property that was stolen from you?
A. Yes, sir.

Cross examination by Capt. HENRIQUEZ:

Q. Mr. Thebaud, do you know these two gentlemen sitting here?
A. I do not.
Q. Were they ever in your employ?
A. Not so far as I know.
Q. Is there any indictment or any criminal prosecution pending in New York State for the larceny of this property?
A. I got an order from the court for this man.
Q. Have you got it?

A. It was served on the sheriff. *A.* It was an indictment and bench warrant, I believe.

Q. With a warrant issued from the judge before whom the indictment was found, I presume?

A. Yes, sir.

171 Q. Against whom was the indictment presented?

A. Edward Kerns the younger.

Q. Is Edward Kerns either one of these two men?

A. No, sir.

Q. All of this property that you have enumerated here, was stolen from you?

A. It was, and those two pieces belong to my wife.

Q. And it was stolen from you in the State of New York?

A. Yes, sir.

Q. Where was it stolen from?

A. No. 108 Madison avenue.

Q. That is your home?

A. That is my home.

Q. You cannot be mistaken about this being your property?

A. As far as my knowledge, I believe it is my property.

Q. Was Kerns in your employ?

A. He was.

Q. When did he leave your employ?

A. Either the 29th or 30th of December, the day he stole these things.

Q. Under what circumstances did he steal this property? How did he come to get it?

A. He was my valet, and had access to it in my closet, and I sent him up the country in the morning. I was going out to spend Sunday in the country. Saturday morning, I sent him up, and he came back and went to the house in the afternoon, as far as I know, and Sunday night I found these things missing. When I went up the country Saturday night, he had taken these things away from the city house, and I was to stay with a friend of mine in the country, and he took my wife's things, which I got most of them back from White Plains, two or three miles out of the city, and he brought those things back to the city with him.

Q. Were there other articles stolen from you besides this?

A. Yes, sir.

Q. What did they consist of?

A. They consisted of the same line and maybe other things that I have not found yet. This ring with a watch in it, I never knew until a few days ago that it was gone.

Q. Did you ever search in any of the pawnbrokers' places here?

A. No, sir.

Q. Did you lose any diamonds either set in scarfpins, or any other besides those, and besides what you have recovered in New York city?

A. Yes, sir.

172 Q. There were other articles missing that you have not yet discovered?

A. Yes, sir.

Q. They were stolen all at the same time by this man?

A. I couldn't say that, because I was not with him, and he had a half of Saturday, and then he came to me the next morning. I went out in the morning at eight o'clock, and he took my wife's things from the country, and I haven't seen him since. I didn't discover the robbery until seven o'clock that night.

Q. Have you seen this man since you came to New Orleans?

A. Yes.

Q. When did you see him, and where?

A. Over at the Gretna jail, yesterday; and I have just seen him in this room a few minutes ago.

Q. That is the man who robbed you?

A. To the best of my belief.

Q. He is a man by the name of Kerns?

A. Edward Kerns the younger.

Q. How long have you had him in your employ?

A. About two months.

Q. Did you ever know him by the name of Manners?

A. I never did.

Q. What did he tell you his name was?

A. Edward Kerns, Jr.

Q. Did you know his parents?

A. I did.

Q. Are they in your employ?

A. Not now.

Q. They were?

A. Yes, sir; I engaged him at the same time.

Q. Were their names Kern?

A. Yes, sir.

Q. Is he the son of that man and woman?

A. Supposed to be.

Q. They acknowledged him their son?

A. They said he was.

Q. That is the man Kerns that you saw over in the Gretna jail?

A. Yes, sir.

I hereby certify that the above is a correct copy of the testimony of Paul G. Thebaud, given in open court on January 21st, 1902, in the presence of and within the hearing of the accused and counsel, who had the opportunity to examine the witness.

Approved:

(S'd) THOMAS M. GILL, JR. *Judge.*

(S'd) CHAS. A. BYRNES,
*Stenographer.*

173 *Testimony Taken in the First City Criminal Court and Read to the Jury by Mr. Mooney.*

T. E. MANNERS, No. 3100 Groveland avenue, Chicago, Ill., sworn for the State, depcses as follows:

Direct examination by the STATE:

Q. When did you arrive in this city, Mr. Manners?
A. I arrived in this city Monday evening one week ago.
Q. Are you the same T. E. Manners who was stopping at the St. Charles hotel on the 14th of this month?
A. Yes, sir; that is the day I arrived.
Q. Just state whether any property belonging to you was stolen from while you were staying at the St. Charles hotel?
A. There was.
Q. Will you tell the court what that property consisted of?
A. Clothing, shirts, collars, cuffs, and handkerchiefs, socks, brushes, and little private articles.
Q. Where did you leave these things?
A. In my room.
Q. I mean, were they scattered about the room, or did you have them in a satchel or valise, or something of that kind?
A. I refuse to answer that question.

By Captain HENRIQUEZ: We object to this testimony. We are not charged with stealing clothing; we ask that the testimony be stricken out of the record.
By the COURT: Objection sustained.

By the STATE:

Q. Besides this clothing, was there anything else stolen that day?
A. I refuse to answer.
Q. On what ground?
A. On the ground that I might incriminate myself.
Q. Are you acquainted with the parties here at the bar, Kline and West?
A. I am not acquainted with the parties.
Q. Do you recollect having seen either or both of them before the 14th of January?
A. I cannot positively say whether I have seen either one of them before the 14th of January; I thought I had seen one of them, but I was not sure.

174 Q. Which one did you think you had seen before?
A. I thought I had seen the man Kline, before.

Q. But you were not personally acquainted with him on this date?
A. No, sir.

Q. Did you ever have any dealings with either of them?
A. No, sir.
Q. Did you give either Kline or West, or both of them, anything?
A. I haven't given them anything.
Q. Did you authorize them to take anything from the St. Charles hotel?
A. I did not.
Q. Do you recollect having seen either of them at the St. Charles hotel?
A. I do recollect having seen one of them at the St. Charles hotel.
Q. Which one?
A. The man by the name of Kline.
Q. When did you next see him?
A. I seen him next over in Gretna jail.
Q. Of course, you don't know how he got there; I mean, of your own personal knowledge?
A. No, sir.
Q. Where were you on the 14th of January?
A. On the night of the 14th of January, I slept at the St. Charles hotel.
Q. Did you make any complaint to the police on the 14th?
A. I did make a complaint.
Q. What time was it when you complained, Mr. Manners?
A. I cannot tell; it must have been about half-past twelve or one o'clock.
Q. Was that the night of the 14th, or early morning of the 15th?
A. Yes, sir.
Q. Where had you been that night?
A. I had been to the theatre.
Q. After the theatre, and before you made this complaint, had you returned to the St. Charles hotel?
A. I had.
Q. How long did you remain at the hotel?
A. Perhaps a half an hour or so.
Q. Did you make any complaint to anyone at the hotel?
A. Why, yes.
Q. Do you recollect to whom you made the complaint?
A. To the clerk.
Q. You don't know his name?
A. I don't.
Q. It was after making that complaint that you came to
175 the police, or made your complaint to them?
A. They were the first ones to think of.
Q. What do you mean by them?
A. The clerks; the men in the hotel.
Q. Where did you go to make your complaint to the police?
A. I did not really make any formal complaint; I just went down to the chief's office, and we tried to find out if they knew anything about it.

Q. You came to the chief's office? Is that right?
A. Yes, sir.
Q. Who did you see in the chief's office, do you know?
A. Well, I don't know anything about that.
Q. I believe I neglected to ask you your occupation?
A. I am a clerk.
Q. Will you tell us for whom?
A. I decline to answer that.
Q. On what ground?
A. On the same ground as before.
Q. Look at this satchel or grip, Mr. Manners, and tell me if you can identify it?
A. I decline to answer.
Q. On what ground?
A. On the same ground.

I hereby certify that the above is a correct copy of the testimony of T. E. Manners, given in open court on Jan'y, 25th, 1902, in the presence of and within the hearing of the accused and counsel, who had the opportunity to examine the witness.

Approved.

(S'd) THOMAS M. GILL, JR., *Judge.*

(S'd) CHAS. A. BYRNE,
*Stenographer.*

176 That the admission of said evidence of the witness, Paul G. Thebaud, was prejudicial error against the rights of these defendants and each one of them; that the admission of said testimony of said witness, Paul G. Thebaud, and the permission granted by the court to the assistant district attorney to read the same, and the reading of the same to the jury, was in violation of these defendants' constitutional rights.

Third. Because of the error apparent upon the face of the record, to-wit, that these defendants, and each one of them, were denied their constitutional rights when the court permitted the testimony of Paul G. Thebaud and Edward Kerns, alias Manners, to be read to the jury when said witnesses were not present; that these defendants, and each one of them were entitled to be confronted with the witnesses who testified against them; that this right of confrontation, guaranteed by art. 9 of the bill of rights of the constitution of the State of Louisiana, provides as follows:

"The accused in every instance shall have the right to be confronted with the witnesses against him. He shall have the right to defend himself, to have the assistance of counsel, to have compulsory process for obtaining witnesses in his favor."

That when the court permitted the reading to the jury of said testimony of said witnesses, Paul G. Thebaud and Edward Kern, Jr., alias Manners, they were denied their constitutional rights in the premises.

Fourth. That although timely objection was made to the introduction of said evidence of said witnesses, the court permitted the said evidence to go to the jury for their consideration; that without said evidence and testimony, no conviction could have been secured; that the admission of said evidence of said witnesses was in violation of common law and in violation of the rights of these defendants, as guaranteed to them by the constitution of this State; that the same is violative of the Constitution of the United States; and that these appearers are entitled to all the guarantees enu-
177 merated and set forth both in the constitution of this State and of the United States; and that by the ruling of the court they were denied their constitutional privileges, and their constitutional rights have been abridged, which is error.

Fifth. And for further reason appearing upon the face of the record, why the judgment herein should be arrested, these defendants say that the admission of the said testimony as aforesaid, of the said witnesses, Paul G. Thebaud and Edward Kern, alias Manners, and the permission granted by the court to the assistant district attorney to read the same, if based upon act No. 123 of the Acts of 1898, then these appearers represent that said act 123 of 1898, which is entitled "An act to provide for the organization of the first and second criminal courts for the parish of Orleans, providing for their officers and duties, and for certain rules of procedure, and the effects thereof in the cases within their jurisdiction," can have no applicability to the issues presented herein, for the reason that the object of this act, as stated in its title, is to provide for the organization of the city criminal courts, for the regulation of procedure in said courts, and not in the district courts of this State; that if said act No. 123 of 1898 is intended to operate beyond the scope of its title, it would be unconstitutional, null and void, because it would be in the nature of a special law, regulating the practice of a court, changing the rules of evidence in contravention of article 48 of the constitution, and because, further, said act would be violative of these defendants' constitutional rights, as guaranteed to them by article 9 of the bill of rights of the constitution of this State.

Wherefore, said defendants, Robert L. West and George I. Kline, pray judgment, and that by the court here, the judgment herein may be arrested, and that they may be dismissed and discharged from the premises in said information charged and specified.

(Signed) GEORGE I. KLINE.
" ROBERT L. WEST.

Filed May 26th, 1902, heard of and snbmitted, and for the written reasons filed, is refused.

(Signed) A. J. DESMOND,
*Minute Clerk.*

178 *Written Reasons of the Court for Refusing the Motion in Arrest of Judgment.*

Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE L. KLINE. } No. 31923.

On motion in arrest of judgment.

The motion in arrest of judgment is based upon grounds already ruled upon by the court adversely to the accused.

The testimony of Edward Kern the younger, was admitted on account of the permanent absence of said witness, not solely as established by the testimony of L. T. Kirn, but also upon the following admissions made by the defendants and found in the record at page 10 of Kirn's testimony:—

"It is admitted on behalf of the State, and without the necessity of formal proof, that the man by the name of Manners or Kerns, was taken back to the city of New York, on a requisition from the governor of that State, honored by the governor of the State of Louisiana, charged with the stealing of this identical property, in the State of New York, which is now made the subject-matter of this information."

For the reasons already given by me, in refusing the motion for a new trial, and also in my rulings upon the various points as they were raised during the trial, the motion in arrest of judgment is refused.

Filed May 26th, 1902,
(Signed) A. J. DESMOND,
*Minute Clerk.*

179 *Additional Supplemental Motion for a New Trial.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

FRIDAY, *May 16th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dist. att'y.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

The defendants, Robert L. West and George I. Kline, in person, each being placed at the bar of the court in custody of the sheriff, being attended by Messrs. Henriquez & Dunn, of counsel, and the motion for a new trial, together with the supplemental motion for a new trial herein, having been fixed for hearing on this day, and the State having moved *of* the court for a continuance of said hearing, and the counsel for the defendants urging no objection thereto; thereupon the court orders proceedings as to the motion and supplemental motion herein continued until Friday, May 23rd, 1902; hereupon, counsel for the defendants presented to the court an additional supplemental motion for a new trial herein, which was ordered filed and fixed for hearing on the above day. The accused was then remanded to await further proceedings.

Hearing of motion for a new trial continued until Monday, May 26th, 1902, on agreement of the parties.

180 *Motion for a New Trial, Arrest of Judgment, and Sentence of the Court.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

MONDAY, *May 26th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m. Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dist. att'y.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 31923. Information for Grand Larceny.

The defendants, George I. Kline and Robert L. West, in person, were placed at the bar of the court, in custody of the sheriff, attended

by their counsel, Messrs. Henriquez and Dunn and Adams. Present for the State, Henry Mooney and S. A. Montgomery, assistant district attorney. The parties being ready to proceed herein, and the motion and supplemental motion for a new trial in the above cause having been fixed for argument this day, thereupon A. D. Henriquez, Esq., of counsel herein, read to the court several motions for a new trial herein pending, and then addressed the court in argument thereon. The argument being closed on behalf of the defendants on the several motions for a new trial, by Lionel Adams, Esq., and the matter being submitted upon the part of the parties thereupon, for the reasons dictated to the official stenographer, and transcribed and filed, the court refused the motion and supplemental motions for a new trial herein, to which ruling of the court counsel for the defendants excepted, and with consent of the court reserved the right to file a bill of exceptions thereto, and to make the several motions for a new trial, in their entirety, a part of said bill.

181 Hereupon, the said counsel, on behalf of defendants, George I. Kline and Robert L. West, presented to the court a motion in arrest of judgment, which motion in arrest being ordered filed, and the same being then and there submitted; thereupon, for the reasons dictated to the official stenographer, transcribed and filed, the court refused the said motion in arrest of judgment; whereupon, in consideration of the verdict of the jury rendered herein, and the law, and the defendants, George I. Kline and Robert L. West, having been asked by the court if they and each of them had anything further to say why the sentence of the law should not be pronounced on them and each of them, and having nothing further to say, thereupon the court sentenced George I. Kline and Robert L. West, for their such crime of grand larceny, each to suffer imprisonment in the State penitentiary for a term of three years, and each to pay the costs of prosecution. Lionel Adams, Esq., of counsel in the above cause, then presented to the court an assignment of errors on behalf of the defendants, George I. Kline and Robert L. West, which assignment is ordered filed.

182 *Written Reasons of the Court for Refusing the Motion for a New Trial, Supplemental Motion for New Trial, and Additional Motions for New Trial.*

Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923.

On motion for a new trial.

The points raised on the motion for a new trial are identically the same as those raised on the trial of the case and which have been

ruled upon by the court, with the exception of the prayer for a new trial on the ground of newly discovered evidence. As to the points upon which the court has already ruled, I see no reason to change my opinion as I then expressed it.

As to the question of newly discovered evidence. The evidence shows that these accused, on their trial in this court, testified that Kern had authorized them to take the property out of the St. Charles hotel, therefore *quo ad* themselves the evidence is not newly discovered. The testimony offered in support of the motion for a new trial on newly-discovered evidence, is the affidavit of Kern, to the effect that he had authorized these parties to take the property out of the St. Charles hotel. The testimony of Kern on the hearing before the first city criminal court, is to the effect that he did not know the accused; that he had not spoken to them; and that he may have seen one of them before, but did not authorize him, or either of them, to take the goods. He therefore either perjured himself in the lower court, or he is perjuring himself in the affidavit which is now offered in support of the motion of the accused for a new trial. Besides, there is no proof that even if the testimony of Kern was admissible, or could carry weight, and that a new trial was granted, that he could be procured. It is shown by the evidence that Kern has been sentenced to imprisonment in the State penitentiary in the State of New York, for the term of four years and six months.

183 The probabilities of getting him back as a witness are not good.

For these reasons, the motion for a new trial is refused.

By Captain HENRIQUEZ. I desire to reserve a bill of exceptions to your honor's ruling, and make the ruling of the court, together with the motion for a new trial, and the supplemental motion, a part of my bill.

Filed, May 26th, 1902.
(Signed) A. J. DESMOND,
*Minute Clerk.*

184 *Motion for a Suspensive Appeal.*

Criminal District Court, Parish of Orleans, Section B.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE } No. 31923.

On motion of Henriquez & Dunn, and Adams & Otero, of counsel for the defendants, Robert L. West and George I. Kline, and

On representing to the court that there is error in the verdict of the jury herein rendered, and in the judgment thereon pronounced,

and because of said error they desire to take a suspensive appeal to the honorable the supreme court of the State of Louisiana,

It is therefore ordered by the court,

That the said defendants, Robert L. West and George I. Kline, be and they are hereby granted a suspensive appeal to the honorable the supreme court of the State of Louisiana.

Filed, May 28th, 1902.

Granted, and is made returnable before the honorable, the supreme court of the State of Louisiana, according to law.

(Signed) A. J. DESMOND,
*Minute Clerk.*

185 *Motion for Suspensive Appeal and Bill of Exceptions.*

STATE OF LOUISIANA:

Criminal District Court for the Parish of Orleans, Section B.

WEDNESDAY, *May 28th*, 1902.

Pursuant to adjournment, court met this day at 10:30 o'clock a. m.

Present: The Hon. Frank D. Chretien, judge, S. A. Montgomery, ass't dis't att'y.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. 31923. Information for Grand Larceny.

A. D. Henriquez, Esq., of counsel for defendants, George I. Kline and Robert L. West, this day presented to the court a certain bill of exceptions reserved upon the ruling of the court on the motion for a new trial in the above cause, and said bill being signed by the court, is ordered filed.

And the said counsel then presented to the court the motion for a suspensive appeal in the above cause, which motion for a suspensive appeal is ordered filed, granted, and is made returnable to the honorable, the supreme court of the State of Louisiana, according to law.

186 *Assignment of Errors.*

Criminal District Court, Section B.

THE STATE OF LA.
*vs.*
R. L. WEST and G. I. KLEIN. } No. —. Information for Grand Larceny.

Now into court, in his own proper person, comes the said Robert L. West, as also does the said George I. Kline, and the action of the

court, its rulings, the verdict of the jury, and the judgment pronounced thereon, assigns as errors, demanding the reversal of such sentence and conviction upon the same is predicated, the following causes, to-wit:

First.

That there is substantial error to their prejudice and great damage, which is patent on the face of the record, and of which they desire to avail themselves, in that (being citizens of the United States and residents of the State of Louisiana, at the time of the alleged commission of the offense in the said information specified, and since, they were and are still denied and refused the benefit, advantage, and protection guaranteed by article 9 of the constitution of the State of Louisiana; and also in that, during the progress of the trial had on said information, the said defendants were and are yet, by the action of the State of Louisiana, its court, and the officer prosecuting therein, denied and deprived of the privileges, rights, and immunities accorded them as citizens of the United States by the fourteenth amendment to the Constitution of the United States—all of which matters and things they now plead as errors patent on the face of the record, by reason of which in accordance with law and precedent, they aver the verdict of the jury herein rendered, and the judgment thereon pronounced, should be reversed, annulled, and held as entirely void.

Second.

That they formally assign as substantial error to their pre-
187 judice and damage, patent on the face of the record, this, to-wit: that during the course of the trial had on the said information, certain illegal evidence was admitted by the court and permitted to be considered by the trial jury, notwithstanding timely objection interposed, without which said evidence, and especially the depositions of Paul G. Thebaud and one — Manners, no conviction could lawfully have been had thereon; which said action of the State of Louisiana, its court and prosecuting officer, in this behalf, in the offering and receiving of said evidence, rendered the said verdict of the jury and the judgment pronounced thereon reversible, null and entirely void because the same were in violation of and utter disregard of the common law, the substantial rights and privileges of the said defendants and the constitution of the State of Louisiana and the fourteenth amendment to the Constitution of the United States of America.

Third.

That at the said trial there was not sufficient or satisfactory proof introduced to justify the offering and receiving in evidence of the beforementioned depositions of the said Thebaud, and the said Manners, and that therefore there was reversible error, which is now

formally assigned, in the action of the said State of Louisiana, its court and prosecuting officer, in offering and permitting such deposition to be read in evidence, notwithstanding timely objection interposed by reason of which defendants were denied and deprived of the benefits, advantages and protection accorded them by said fourteenth amendment to the Constitution of the United States, in that they were not allowed the right and privilege of being confronted with the said witnesses against them, and because, in the absence of sufficient proof to warrant the offering and receiving in evidence of said deposition, as well as in consequence of the said action of the State of Louisiana, its court and prosecuting officer, the said defendants were denied "due process of law," and the rights, privileges and immunities guaranteed by the common law,
188 the constitution of the State of Louisiana and the fourteenth amendment to the Constitution of the United States of America.

Wherefore, for these and divers other reasons apparent upon the face of the record, the said defendants asked leave to file and to have settled and sealed, this assignment of errors, so that, by reason thereof, the verdict of the jury herein returned and recorded, and the judgment pronounced thereon may be reversed, annulled, and held as entirely void, and the said defendants be restored to all things which by the judgment aforesaid, they have lost by reason of the premises aforesaid.

(Signed) GEORGE I. KLINE.
" ROBERT L. WEST.

Sworn and subscribed to before me, this 26th day of May, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

Filed May 26th, 1902.

(Signed) A. J. DESMOND,
*Minute Clerk.*

189 I, J. A. Malloy, do hereby certify that the foregoing 146 pages is a true, full, and correct copy of the original, as the same appears on file and of record, in the clerk's office of the criminal district court, in the case of The State *vs.* George I. Kline and Robert L. West, No. 31,923. Indictment for grand larceny.

In testimony whereof, I hereunto sign my name and affix the seal of said court, at the city of New Orleans, State of Louisiana, this 7th day of June, and in the one hundred and twenty-sixth year of the Independence of America.

[SEAL.] (Signed) JAS. A. MALLOY, *Clerk.*

190 *Proceedings Had in the Supreme Court of the State of Louisiana.*

UNITED STATES OF AMERICA,
*State of Louisiana.*

Supreme Court of the State of Louisiana.

Transcript of Appeal Filed.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

Appeal from the criminal district court, parish of Orleans.

Filed June 7th, 1902.
(Signed) PAUL E. MORTIMER,
*Deputy Clerk.*

*Agreement to Continue Cause.*

Filed November 8th, 1902.

Supreme Court of Louisiana.

STATE OF LOUISIANA, Appellee,
*vs.*
GEORGE I. KLINE and ROBERT L. WEST, Appellants. } No. 14525.

With the consent and permission of this honorable court it is agreed that this case be continued by preference.

(Signed) HENRIQUES & DUNN,
*Att'ys for Appellants & Defendants.*

(Signed) J. WARD GURLEY,
*Dist. Att'y, for Appellee.*

Nov. 7, 1902.

191 *Cause Continued.*

(Extract from Minutes.)

NEW ORLEANS, SATURDAY, *November 8th*, 1902.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

This cause came on this day to be heard when, on the motion of counsel for the prosecution and for the defense, the court ordered the same to be continued to Saturday the 22nd day of November instant.

*Motion and Order to Strike Names of Counsel.*

(Extract from Minutes.)

NEW ORLEANS, SATURDAY, *December 20th*, 1902.

The court was duly opened, pursuant to adjournment.
Present: Their honors Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

On motion of Adams & Otero, it is ordered by the court that their names be stricken from the record in this case they having
192 withdrawn as counsel for the defendants and appellants herein.

*Cause Submitted.*

(Extract from Minutes.)

NEW ORLEANS, SATURDAY, *December 20th*, 1902.

The court was duly opened, pursuant to adjournment.
Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

This cause came on this day to be heard and was argued by Mr. Albert D. Henriques, of counsel for the defendants and appellants, and by Mr. Henry Mooney, assistant district attorney for the parish of Orleans, herein appearing on behalf of The State of Louisiana, plaintiff and appellee. The court then took the cause under advisement upon the briefs for both parties and the papers now on file.

*Opinion of the Court.*

Filed January 5th, 1903.

UNITED STATES OF AMERICA,
*State of Louisiana.*

Supreme Court of the State of Louisiana

NEW ORLEANS, MONDAY, *January 5th*, 1903.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

His honor, the chief justice pronounced the opinion and judgment of the court in the following case:—

193 STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

Appeal from the criminal district court for the parish of Orleans.

*Statement of the Case.*

The two defendants were found guilty and each sentenced to suffer imprisonment in the State penitentiary for a term of three years and to pay the costs of prosecution. They appealed.

The information upon which they were tried charged the crime to have been committed on the 4th of January, 1902, in the parish of Orleans and within the jurisdiction of the criminal district court for the parish of Orleans, that the property stolen belonged to Paul G. Thebeaud and when stolen they were in the parish of Orleans and within the jurisdiction of the criminal district court.

The first bill of exception submitted to us is to the action of the court in respect to an exception which they had filed to the jurisdiction of the court. In this exception they set out that the court ought not to take cognizance of the cause because the record and evidence taken before Thomas M. Gill, judge of the first city criminal court for the parish of Orleans on Feb. 19th, 1902, affirmatively showed that the criminal district court had no jurisdiction over the accused nor over the matters alleged charged and specified in the information because—1st—on the examination thereof before the said first city criminal court the witness Paul G. Thebeaud being sworn on behalf of the State, did testify that the alleged larceny as therein set forth was committed in the State of New York and not within the jurisdiction of the criminal district court.

2nd. Because the said Paul G. Thebeaud is alleged in the in-
194 formation to be the owner of the property alleged to have been stolen.

3rd. Because under the law where property stolen in another State is brought to this State if even by the thief, the crime of larceny is not committed in the State of Louisiana.

4th. Because the said Paul G. Thebeaud in his testimony before the first city criminal court and which was on file in the criminal district court and part of the case No. 31,923 then before the latter court, testified that the accused were not the persons who committed the alleged larceny, but on the contrary that the larceny of his goods and chattels as charged in the information was committed in the State of New York and by one Edward Kerns who was then in his employ.

5th. For the further reason that if a larceny was committed in the State of New York and stolen goods were brought into this State, the courts of Louisiana have no jurisdiction either over the person or the subject matter of the offense; that the jurisdiction over the offense is in another tribunal to-wit

The court or courts of the State of New York.

The court made the following ruling on the exception—"

"On the preliminary examination of the charge made against Robert L. West and George I. Kline of grand larceny before the first city criminal court certain parties were examined by the judge of that court in order to determine whether there was such a case as would justify the sending of the parties to the proper tribunal to be tried. After an investigation the case was sent to the criminal court to be tried according to law. Subsequently—that is to say on the 25th of Feb'y 1902, an information was filed against the two accused for grand larceny. They were arraigned and upon their arraignment leave was asked to file any plea that the accused might desire thereafter. Subsequently a plea to the jurisdiction of the court was filed. Upon the trial of this plea the accused
195 through their counsel proposed to offer in evidence the testimony of the witnesses mentioned in the offer made by them upon which to rest the plea which they had filed on the ground that the testimony formed part of the record of the criminal district court.

"The testimony taken in the lower court is not testimony in the criminal district court unless offered anew and only under certain contingencies provided by law can it be used at all. The State charges in the information a certain crime against the accused which must be established by the State upon proper evidence and what evidence will be introduced can only be disclosed upon the trial of the case. I do not consider that the testimony taken in the lower court is testimony in this court and part of the record in the district court. It will become part of the record only after offer and it can be offered and used only under certain circumstances. I therefore maintain the objection of the State as I am of the opinion that the

testimony offered and intended to be used as the basis to the plea to the jurisdiction is not testimony and can not be considered by the court unless it be offered under the provisions of law now existing governing such offers. The court further rules that the plea having been submitted to the court the same is referred to the merits to be there tried after testimony shall have been offered in order to determine from that testimony whether the court has jurisdiction of the subject matter or not.

"Counsel embodied in their bill as part thereof, the testimony of Paul G. Thebeaud—T. E. Manners alias Kern and the witness Sergeant John F. Kelly of New York city."

It appears that later and during the trial of the case the testimony of Paul G. Thebeaud and Edward Kerns alias Manners which had been taken in the first city criminal court was permitted to be read to the jury over the objections made by the defendants thereto, as shown by their bill of exception taken in relation to the same,

196 and that after this testimony had been read defendants again excepted to the jurisdiction but that the action of the court being deemed by them prejudicial and illegal they excepted and filed a second bill of exception on this subject of jurisdiction. In their bill they aver that the testimony of the witness Paul G. Thebeaud showed that the jewelry charged to have been stolen from him had been stolen in the city of New York and that the perpetrators of the crime was Edward Kerns Jr., and not the defendants, and furthermore showed that the said Edward Kerns Jr., alias Manners was in his employ at the time that he committed said offense in the State of New York, that he did not know the accused, that he had never seen them and that the person who committed the larceny was Edward Kerns, Jr.; that the larceny was committed out of the jurisdiction of the criminal district court as was evidenced by said testimony.

The action of the court upon defendants' plea and its reasons for the same are set out at the foot of the bill of exception as follows—

"After the State had read the deposition of Paul G. Thebaud and Edward Kern otherwise known as Manners, taken before the first city criminal court the accused filed a plea to the jurisdiction of the criminal district court founded upon the ground that the jewelry charged to have been stolen from him by the accused at the bar had been stolen from him in the State of New York by Edward Kern, Jr., in Dec. 1901. The State has not closed its case and whether it will establish hereafter the proper venue can only be determined by the testimony to be offered. If instead of West and Kline being charged to have committed the offense, the information had charged Edward Kern Jr., with the offense and the asportation was shown to have taken place in New York there would be no doubt as to the force of the plea filed, for our law does not recognize continuous asportation of property and the taking in that case having been in New York, the offense would not exist in this State by the mere transportation of the property from the place of

taking to this place. But the information does not charge Edward Kern, Jr., or Manners with the crime but George I. Kline
197 and Robert L. West.

It is elementary in law that a thief may steal from a thief, the dominion over the property by the first thief being considered by fiction as that of the owner.

West and Kline can therefore be charged with having stolen property from P. G. Thebaud in this city on the 14th of January 1902, notwithstanding that the property had in December 1901 been stolen by Kern otherwise known as Manners from Thebaud in New York. If the property stolen be proved to have been stolen from Kern in this city on the 14th of January 1902, the charge would hold under the law notwithstanding the fact that the property had on Dec. 1901, been stolen by Kern from Thebaud in the State of New York.

The accused on a previous day filed a plea to the jurisdiction of the court founded on the same ground which plea had been referred by the court to the merits of this case. Both pleas are now considered by the court and for the reasons given they are overruled reserving to the accused the right to file pleas to the jurisdiction of the court hereafter should occasio- demand or justify it. Counsel embodied in the bill of exception the testimony of Thebaud and Manners taken before the first city criminal court.

The 3rd bill of exceptions to which we direct our attention is one in which it is recited that a jury having been called and empanelled to try the case the State called — to the witness stand for the purpose of proving that one Paul G. Thebaud a witness whose testimony was taken at the preliminary examination was absent from the State and his testimony was then taken. That said testimony was offered on behalf of the State for the purpose of laying the foundation for the introduction of the evidence of Paul G. Thebaud taken on the preliminary examination before the first city criminal court., that at the time when said testimony was heard the assistant district attorney representing the State announced to the court
198 as follows—

" Now, if the court please, we have shown by two witnesses that Mr. Th-baud is absent from the State and I submit that sufficient showing has been made under the law and that we have now the right to read the testimony taken in the lower court. I now propose to read the testimony of Mr. Thebaud."

To which offer counsel for accused objected on the following grounds. Because no where in this evidence which was offered to lay a foundation for the introduction of testimony taken or alleged to be taken before the committing magistrate of the witness Thebaud is it shown that he is at this time out of the city of New Orleans this day, nor is there any evidence offered on behalf of the State to prove affirmatively that the witness named Thebaud is permanently absent from the State of Louisiana.—

Counsel for defendant stated that they had other objections to urge to the introduction of this testimony which could not be urged at that time unless the court considered that the proper foundation had been laid—that the court stated "Upon the evidence offered I will allow the testimony offered"—that counsel then asked the court whether it considered that sufficient foundation had been paid to which the court answered "Yes." That to the ruling of the court at that time made permitting the testimony of Paul G. Thebaud to be read counsel excepted and tendered a bill of exceptions to which the judge affixed his signature. Counsel embodied in the bill of exceptions the testimony offered by the State to lay the foundation for the introduction of Thebaud's testimony taken before the first city criminal court.

The 4th bill of exceptions to which our attention is called is one in which it is recited that on the trial of the case after the court had ruled that the testimony of Paul G. Thebaud could be read to the jury and before the reading thereof counsel for defendants called several named witnesses to the stand for the purpose of
199 proving that the examination before the first city criminal court was fixed in said court for the 25th day of January 1902, but that prior to said day of examination and on the 21st of January 1902, the said defendants without notice were taken to the first city criminal court and when in said court announcement was made by the judge of said court that the said defendants were called before the court for the purpose of hearing the testimony of one Paul G. Thebaud, a witness on behalf of the State, that at that time counsel for defendants entered the following objections to the hearing of said testimony:

"That the said Paul G. Thebaud was not a prisoner in jail, that he had not asked the court that his testimony be heard, that there was no evidence before the court that he had asked to be heard as a witness in this case, that if the proceeding was had under the acts of 1896, then that defendants object because said Paul G. Thebaud was not in jail; that no service of notice to hear the testimony of said witness Thebaud had been served on the defendants, that the cause having been fixed for examination for the 25th day of January 1902, and it not being shown that it was absolutely necessary that the testimony of said Thebaud should be heard at this time counsel for defendants object to the hearing thereof.

Furthermore, that the hearing of said testimony of Thebaud before the first city criminal court was irregular and not warranted by law, that there was no evidence to show that said witness had asked that his testimony be taken in advance of the preliminary examination, nor was any notice served upon the accused of the intention to take the testimony of said witness prior to the examination of this case which had been fixed for the 25th of January, 1902.

That no application was made to the district attorney for the parish of Orleans or to any assistant district attorney that the wit-

ness desired to be heard in advance of the preliminary ex-
200 amination, that as the preliminary examination had been fixed for the 25th the hearing of this testimony was irregular, unwarranted and not in accordance with law. That defendants further objected to the reading of the testimony of Thebaud a witness for the State who was claimed to be absent from the State because the reading of this testimony to the jury was in violation of art. 9 of the constitution of the State of Louisiana of 1898 which prescribed that—

"The accused in every instance shall have the right to be confronted by the witnesses against him." That the reading of said testimony as taken before the first city criminal court on the preliminary examination — in violation of said constitutional provision.

Furthermore that the reading of said testimony of said alleged absent witness was not only violative of the constitution of the State of Louisiana but is also violative of the Constitution of the United States and the 6th article of the Constitution as well as the fourteenth amendment of the Constitution of the United States also because it was not shown that the witness Thebaud was dead, insane or sick, nor had it been shown that the witness was absent by the procurement of the defendants or either of them. That the reading of said testimony would be in violation of their constitutional rights.

That they were permitted to take the testimony of several witnesses in support of these objections and that they embodied said testimony in their bill of exceptions. That the court ruled at to said objections as follows—

The accused through their counsel object to the reading of the testimony of Paul G. Thebaud, taken before the first city criminal court on grounds—

That Mr. Paul G. Thebaud was not at the time that his testimony was taken in the first city criminal court a prisoner in jail; that he had not asked the court that his testimony should be heard that there was no evidence before the court to show that he had
201 asked to be heard as a witness in the case; that the defendants under the law were entitled to two days' notice if residents of the parish of Orleans; of a service on them to hear the giving of the testimony and that the law provides if they be non-residents that they are entitled to ten days' notice. That the accused are non-residents of this parish that they had at no time received notice that they were to appear on the day fixed to take the deposition of Thebaud for the purpose of hearing the taking of his testimony. That there was nothing in the record to show any application was made to the court by the witness to have his deposition taken and that no notice was given the defendant and district attorney by the witness of any desire on his part to have his testimony taken.

2nd. That the testimony is not admissible in evidence and can not be read to the jury for the further reason that they are entitled to be confronted with the witnesses against them in every instance

under article 9 of the constitution of 1898, and that they claim that privilege granted them by law, and at this time the further objection is made that the testimony can not be read because under article 9 of the Constitution of the United States and the fourteenth amendment of the Constitution of the United States, the accused are entitled to be confronted with their witnesses at all times, and they claim this right at present to the reading of the testimony on the ground that said testimony can not be read, and that — have to be confronted by their witnesses, unless it be shown that the witness is dead, insane, sick or absent by the procurement of the defendant or his counsel.

The first objections are based upon the provisions of act No. 124 of 1896. This act was intended and passed to give relief to a class of people who previously when detained in jail as material witnesses had to await the trial of the case for their release, when unable to furnish security for their appe-rance. It gives them a privilege which the State can not deny them, and which limits
202 their confinement to as short a period as is compatible with the proper administration of criminal justice and does away with the cruel wrongs that those unable to furnish bonds are made to suffer. The act has reference to this class of witnesses alone and its provisions can not be extended to any other class of witnesses not within its province.

Mr. Thebaud was not a detained witness and therefore the notices required by the act are not required of him. The objections raised by the reading of his deposition on that ground, is not, therefore well taken, and is overruled. But it is objected that the accused had no previous notice of the taking of the deposition of Mr. Thebaud; that they were entitled to some notice, and that they having objected to the taking of the deposition at the time, that the same should not be read to the jury.

By art. 140 of the constitution of 1898 the judges of the city criminal courts are given jurisdiction as committing magistrates, with authority to bail or discharge. They, therefore had the power not only to examine whether the State had made a sufficient showing to send the accused to a higher tribunal for trial, but in line with that power they had the right to take the deposition of any material witness whenever in their judgment necessity demanded such exercise of power, to prevent a failure of justice.

The act providing for the organization of these courts does not direct that any notice should be given the accused before the taking of the deposition of a witness for the State. Under it these witnesses may be examined at any time, provided that they be not deprived of those rights secured to them by article 9 of the constitution of 1898, of being confronted with the witnesses against them, or the right to defend themselves to have the assistance of counsel, to have compulsory process for obtaining witnesses in their favor. Of none of these rights have they been deprived. They were con-

fronted with the witness and they were ably represented by
203 leading members of the bar. They suffered no injury and the objection must be overruled.

The last objection is that they are entitled to be confronted with the witness at the present trial and that under article 9 of the constitution they can not be deprived of that right. Article 9 of the present constitution of 1898 differs from that of 1879 in having the words "in every instance" added. Article 9 of the constitution of 1879 among other things provides—

"In all criminal prosecution the accused shall enjoy the right to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him."

To this the three words "in every instance" are added, under article 9 of the constitution of 1898. Counsel argues that this means that in every stage of the proceeding that in so far as act 124 of the acts of 1896 provides for the reading of testimony of witnesses permanently absent from the State, it is in conflict with the above quoted article of the constitution and therefore inoperative. The words "in every instance" do not mean in my opinion in every stage of the proceedings but rather in every case whenever a witness is to be examined. It only emphasizes the right to be confronted and otherwise adds no conditions to the provisions of article 8 of the constitution of 1898. Whatever may be my own private or personal opinion as to the right of reading testimony of witnesses permanently absent from the State without the procurement of the party against whom it is directed, may be the question has entered the domain of "*stare decisis*" and under the well formulated decisions of our supreme court on that point I hold the objections not well founded, and I allow the testimony to be read."

To the ruling of the court counsel representing the accused reserved their bill of exceptions, and makes a note of his objections now, and makes part of his bill the testimony together with the judge's reasons for over-ruling the objections herein.

And be it further remembered, that after the overruling of
204 the objections herein, the court permitted the testimony of said Paul G. Thebaud, taken in the first city criminal court to be read to the jury, and offered against these defendants, to all of which counsel excepted and now tenders this his bill of exceptions for signature and prays that the same be made part of the record herein."

The 5th bill of exceptions which we notice is that taken to the refusal of the court to give the following special instruction.

"The court instructs the jury that their personal opinions as to the facts not proven can not be considered as the basis of their verdict. The jury may believe as men that certain facts exist, but as jurors they can only act upon the evidence introduced on the trial, and from that evidence, and that evidence alone, the jury must form their verdict, unaided unassisted and uninfluenced by any opinion or presumptions not founded upon the testimony."

The reason assigned by the court for declining to give this special instruction was that the general charge which it had given covered it in every respect.

The 6th bill of exceptions we refer to as one taken to a certain question propounded by the State on cross-examination of the witness George I. Kline one of the defendants, then on the stand as a witness on his own behalf and to the answers given by said witness which are embodied in the bill. Defendant objected to said questions and answer thereto on the ground that the State should confine itself to what was brought out in direct examination of the witness or what was ultimately connected with it, that the questions asked and the answers attempted to be elicited from the witness *was* foreign to the dir-ct examination and *was* in no way connected with the same.

The court overruled the objections and permitted the questions to be asked and answered on the ground that the question was proper and closely connected with the testimony given by the de-
205 fendant and was admitted it being a part of the transaction narrated by the witness himself.

The seventh bill of exception was to a sentence in the court's charge to the jury in which it said

"When goods stolen are very shortly afterwards found in the possession of a man who is unable satisfactorily to show by evidence in what manner he came by them the presumption is that he is the thief."

Defendants excepted that said portion of the general charge was not warranted by the evidence offered on the trial and it was misleading and not a correct exposition of the law, that the evidence which was found in the record did not warrant the court in delivering said charge.

In reference to this the court said "The evidence showed that the property was in possession of the accused shortly after it had been stolen from the St. Charles hotel. The evidence on behalf of the State was circumstantial. I refer to the charge given by me as a part of this bill.

Defendants filed a motion and two supplemental motions for a new trial. There is only one of the grounds assigned which needs to be alluded to. In one of the supplemental motions defendants refer to the fact that on the trial of the cause the testimony of Edward Kern Jr., taken before the first city criminal court on the preliminary examination was read to the jury, the witness being at that time absent from the State, and that that testimony contributed to their conviction that at the time of the trial Kerns was a prisoner in jail in New York and held for grand larceny committed by him in the city of New York on the 29th of December, of numerous articles belonging to Paul G. Thebaud, that he pleaded guilty to the charge and was sentenced to be imprisoned in the State penitentiary for the term of four years, that said Thebaud was the same person whose property defendants had been charged in the

information filed against them in the criminal district court,
206 with having stolen, and that the property which Kern had been convicted of stealing was the identical property which they themselves had been convicted of stealing. They further claimed that since the trial of their case they had discovered new evidence of which they were ignorant and could not have discovered, that this consisted of an affidavit of Edward Kern Jr., which they made part of their motion to the effect that he authorized George I. Kline, one of the defendants to take possession of and move all of the property which he had (the property alleged to have been stolen) in the room No. 859 of the St. Charles hotel and to meet him at Atlanta, that he would testify to that effect.

The district judge in refusing the new trial said that the points raised were identically the same which had been ruled upon by the court on the trial with the exception of *a* the prayer for a new trial on the ground of newly discovered evidence. In respect to this the court said that the accused on their trial testified that Kern authorized them to take the property out of the St. Charles hotel, therefore *quoad* them the evidence was not newly discovered. That on the preliminary examination Kern testified that he did not know the accused, he had not spoken to them, that he may have seen one of them before but did not authorize him or either of them to take the goods. He therefore either perjured himself in the lower court or he was perjuring himself in the affidavit which was offered in support of the new trial. Besides there was no proof that even if the testimony of Kern was admissible or could carry weight and a new trial was granted that he could be procured as a witness.

It has been shown by the evidence that he had been sentenced to hard labor in the penitentiary in the State of New York for four years. The probability therefore of getting him as a witness was not good. Defendants filed a motion in arrest of judgment declaring that the grounds assigned were apparent on the face of
207 the record. The matters assigned in the motion were matters already ruled upon by the lower court and covered by bills of exception, the incorrectness of which defendants attempted to support by a recapitulation of the testimony which was set out in the different bills of exception. The testimony in the record was "not apparent on the face of the record" for the purpose of a motion in arrest of judgment (State *v.* Tanner, 38 Ann., 307). The court overruled the motion.

*Opinion.*

Defendants urge want of jurisdiction over this case. It is not claimed that if larceny of the goods mentioned occurred in Louisiana, it was committed outside of the parish of Orleans, and beyond the territorial jurisdiction of the criminal district court, nor that that court has not jurisdiction over the crime of larceny in the State of Louisiana, and therefore that the State and no court of the State

have cognizance of the crime. It is conceded by the State that if the crime sought to be tried, occurred in the State of New York, it has no authority nor is it charged with the duty of prosecuting it. That issue is not in this case. The State insists and charges that there was larceny of the goods within its borders.

That is a matter of fact (blended in this case with law) which has to be submitted to and passed upon by a jury upon evidence adduced before it under a charge from the judge. State *vs.* Foster 8 Ann'l, 202. State *vs.* Tanner 38 Ann'l, 307. State *vs.* Harris 107 La., 324. State *vs.* Starks, 42 Ann. 315.

Appellants endeavored to have the question disposed of by the judge under a motion twice made before the evidence was closed, the motions being based upon the fact that at the time they were made two or three witnesses who had been introduced by the State had given testimony as they claimed which negatived the fact that the larceny had been committed in Louisiana, and showed affirmatively that it had been committed in the city of New York.

The court refused to pass upon the motions at that time
208 and under those conditions reserving to the defendant the right of renewing the motions later, after the evidence was closed.

Defendants did not avail themselves of the privilege.

The action of the court in the matter was correct. It could not undertake to pass upon the question on fragmentary testimony, however strong it may have been, and even though the testimony came from State witnesses. Testimony taken subsequently might completely overturn that of those particular witnesses.

The necessities of the case do not require us to say or decide whether the defendants would have been entitled to call for a decision by the court of the question of jurisdiction, if the call had been made after the evidence was closed and before the jury had retired for a verdict, for no demand was made for a ruling at that time. Had the court been called upon to do so and acted upon it, it would have withdrawn the prosecution entirely from the jury and passed itself upon both the law and the facts of the case.

As matters took shape, the case went to the jury which rendered a verdict of guilty. The court overruled the motion for a new trial and in so doing held that it was justified by both law and fact. We are in no position to hold that the jury and the court erred for they acted upon the entire evidence adduced while we have before us only so much of the evidence as is embodied in the bill of exceptions.

We cannot act upon a fragment of the testimony. See State *vs.* Nash & Barnet 46 Ann'l 214. State *vs.* Foster 8 A., 292. State *vs.* Tanner 38 Ann'l, 307. State *vs.* Harris 107 La., 324. State *v.* Starks, 42 Ann. 315.

The defendants contend that the case was submitted to the jury upon illegal testimony.

The testimony complained of is that of Thebaud and Manners taken in the first city criminal court, before the case was sent to the criminal district court for trial. It is the same testimony
209 which defendants have embodied in the bill of exception taken by them to the rulings of the court on the subject of jurisdiction, and which they seek to utilize for the purpose of defeating the prosecution.

It is urged broadly by appellants that they were entitled under art. 9 of the constitution of 1898 to have in every case and under all circumstances the witnesses themselves present in court on the final trial, so that they could then and there confront them, and that their testimony taken before the judge of the city court, acting as a committing magistrate was inadmissible.

It is now pretended that as a fact the accused were not present when that testimony was taken. The evidence which has been brought up discloses that they were present at the examination and cross examined the witnesses. They maintain however that that examination at the time and place it was made was irregular and illegal, that it was made without proper notice to them and that it was not justified by the terms of art. No. — of 1896 under which it was taken. That their presence at that examination was under duress and their participation therein was over their objections. We do not think the defendants are in position to object to the testimony taken before the first city criminal court simply on account of the time and place at which it was taken as they themselves have made use of that testimony in support of their plea to the jurisdiction. The testimony is not pretended to have been taken under the act of 1896, but under the general powers of the judge of that court as a committing magistrate under arts. 140 and 96 of the constitution and section 1010 of the Revised Statutes. The reasons assigned by the district judge for his rulings, we think justify his course.

Assuming it to have been properly taken, defendants contend that there was not sufficient evidence before the court at the time of the trial that the witnesses were then out of the jurisdiction of the court or out of the State, and if out of the State that it had not
210 been shown that their absence was by procurement of the defendants, that they were insane or physically disabled from attending court.

We think the evidence adduced sufficiently showed the absence of these witnesses from the State beyond the reach of process at the time of trial, and that there was no reasonable probability that they would return to Louisiana. Thebaud is shown by his own testimony, brought up in one of defendants' bills of exception to reside permanently in the city of New York, and he testified that he did not expect to return to this State (State *vs.* Jacobi, 32 Southern Rep. 158 — Ala. —) His testimony was supplemented by that of others. Kerns alias Manners was shown to be in the penitentiary in New York, under a four years' sentence.

The next position of the defendants is that this testimony was inadmissible, even if it had been regularly taken, and even if it had been shown that Thebaud and Manners were permanently absent from the State, inasmuch as art. 9 of the constitution guaranteed an accused party "in every instance" the "right to be confronted with the witnesses against him." On this point counsel of appellants make the following statement in their brief (see their brief p. 10).

"The court will notice that all prior constitutions to the one now in force in this State contain no such radical and far reaching provisions as that of article 9 of the bill of rights of the constitution of 1898, which contains the sacramental *rpovision* that 'the accused *in every instance* shall have the right to be confronted with the witnesses against him,' and for the first time is this court called upon to determine that question under the present constitution.

"The defendants contend that there is no limitation under the constitution of this State as to the number of times the accused shall be confronted with the witnesses against him in criminal proceedings. The grant of right is that in all criminal prosecutions the accused *in every instance* shall have the right to be confronted with the witnesses against him.

"The frequency with which he is charged, or the frequency with which he is tried, can in no manner imperil, diminish or
211 destroy the right."

They refer the court to the trial of Lord Morley vol. 6, Howell's State Trials, pages 770 *et seq.* Regina *vs.* Schaife Rook & Smith, 5 vol. Cox's Criminal Law Cases p. 243.

Reg. *vs.* Gutridge (9 Carrington & Payso 475). Savage case (1 Carr & M. 147). 2 Starkie on Evidence. Wharton on Crim. Evidence par. 229. Taylor on Ev. par. 474–478. Cooley on Constl. Limitations p. 387. U. S. *vs.* Angel. XI Fed. Repr. Murray *vs.* Louisiana 163 U. S. 101. People *vs.* Sligh (48 Mich. 56). People *vs.* Newman 5 Hill 295. Finn *vs.* Com. 5 Rand (Va.) 701. People *vs.* Diaz 6 Cal. 248. State *vs.* O'Blennan 24 Mo. 402. Owens *vs.* State 63 Miss. 452. U. S. Byd. 116. U. S. 616–635. State *vs.* Banks 106 La. 481.

Counsel give a very full and interesting statement of the legislation and jurisprudence of England on this subject but we are controlled by our own legislation and jurisprudence. On behalf of the State the following authorities are referred to.

Vol. 2, (3rd ed.) Bishop Crom. Proc. pars. 718–721. Vol. 1 Bish. New Crim. Proc. page 731, page 736 par. 1194 and par. 1204. State *vs.* Harvey 28 Annl. 105. State *vs.* Jordan. 34 Annl. 1219. State *vs.* Coudier 36 Annl. 291. State *vs.* Allen & Carter 37 Annl. 685. State *vs.* Riley 42 Annl., 995. State *vs.* Arbuno 105 La. 719.

To these may be added:

State *vs.* McNeil 33 Annl. 1332.
State *vs.* Hephouse 34 Annl. 9
State *vs.* Douglas 34 A. 523.

State *vs.* Stewart 34 A. 1037.
State *vs.* Granville. 34 A. 1088.
State *vs.* Jordan. 43 A. 1219.
State *vs.* Wiggins. 50 Annl. 338.
State *vs.* Timberlake 50 A. 308.

A reference to these various decisions will show that this court has repeatedly permitted the introduction in evidence of testimony of witnesses which had been taken down in writing on a preliminary examination, when the presence of the witnesses themselves at the trial could not be obtained. In the case before us the witnesses whose written testimony was so received were permanently absent from the State, the accused were present at the examination
212 and cross examined the witnesses. The jurisprudence of the State on the subject fully warranted the action of the district court in permitting the testimony to be introduced.

Defendants contend this jurisprudence has no longer force in Louisiana under the constitution of 1898 and the provisions of art. 9 which are as follows:

"In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury; provided that cases in which the penalty is not necessarily imprisonment at hard labor or death, shall be tried by the court without a jury or by a jury less than twelve in number as provided elsewhere in the constitution, provided further that all trials shall take place in the parish in which the offense was committed unless the venue be changed. The accused in every instance shall have the right to be confronted with the witnesses against him, he shall have the right to defend himself to have the assistance of counsel to have compulsory process for obtaining witnesses in his favor."

Were we to give to the words "in every instance" found in this article the broad effect claimed for *it*, as evidencing an intention to bring about a change in the pre-existing situation they would entirely sweep away all exceptions to the new rule so absolutely laid down, and do away among other matters with dying declarations.

The article in question commences, as did the corresponding article in preceding constitutions, with the expressions "in all criminal prosecutions." These words would as fully exclude exceptions if taken literally as would the following words: "in every instance," and defendants attribute the presence of the same in the article to an intention to make it signify something more and other than it would do otherwise. We think those words were inserted simply by reason of the presence in the article of the matters covered by the proviso. The proviso broke in upon the con-
213 tinuity of the article and in taking it up again instead of repeating its opening words "in all criminal prosecutions" the convention substituted the words "*in every instance*" as a matter of style. Either this was the reason for the words or they were placed in the article in order to place beyond question the fact that *all*

*kinds* of criminal prosecutions were intended to be made to fall under the operation of the rule.

It is not at all probable that so radical a change as defendants claim could have been intended by or adopted by the convention without some debate. We have been furnished with evidence of no such debate. We think the rule on the subject remains as it was before.

We see nothing in the application for a new trial or in the motion or in arrest of judgment which calls for reversal.

For the reasons assigned, it is ordered, adjudged and decreed that the judgment appealed from be, and the same is hereby affirmed.

*Final Judgment.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *January 5th*, 1903.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice. Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

His honor, the chief justice pronounced the opinion and judgment of the court in the following case:

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

Appeal from the criminal district court for the parish of Orleans.

For the reasons assigned, it is ordered, adjudged and decreed that the judgment appealed from be, and the same is hereby affirmed.

214 *Memorandum of Submission.*

Supreme Court, State of Louisiana.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

To the honorable the chief justice and associate justices of the supreme court, State of Louisiana:

Now come Robert L. West and George I. Kline, through their undersigned counsel, — respectfully submit their petition for a re-

hearing in this cause, upon the briefs on file, and respectfully pray a prompt consideration of their said application for a rehearing.

(Signed) HENRIQUES & DUNN,
(Signed) HENRY L. LAZARUS,
*Of Counsel.*

N. O. Jan'y 14/03.

(Endorsed:) No. 14525. Supreme court State of Louisiana. State of Louisiana *vs.* Geo. I. Kline and Robert L. West. Memorandum of submission. Filed Jan'y 14, 1903. (Signed) T. McC. Hyman, clerk.

*Petition for Rehearing.*

Supreme Court, State of Louisiana.

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

To the honorable the chief justice and associate justices of the supreme court of the State of Louisiana:

The petition of George I. Kline and Robert L. West, defendants and appellants in the above-numbered and entitled cause pending before this honorable court, respectfully represents:

215 That in the opinion and decree pronounced in the cause, there is error to their prejudice, and they are aggrieved thereby; that there should be a further consideration of the cause, a review of the opinion pronounced, a rehearing granted, and a reversal of the judgment of the trial court; and that there is error to their prejudice in this, to-wit:

First.

That there was specifically and pointedly raised in the trial court, to the administration of proof by the State of the testimony said to have been given by Paul G. Thebaud and T. E. Manners, alias Kern, the constitutional rights asserted by these defendants, and the protection which they claimed under the fourteenth amendment of the Constitution of the United States, guaranteeing to them the preservation of their life and liberty, and prohibiting the States and all of its agencies, executive, legislative, and judicial, from depriving them of their life or liberty without due process of law.

That the trial court held adversely to the right asserted and claimed, of confrontation with the witnesses produced against them, and which fundamental and substantial right, guaranteed to them by the fourteenth amendment of the Constitution of the United States, was denied to them.

Second.

That as appears by the record, without the admission of the depositions of the aforesaid Thebaud and Manners, alias Kerns, no conviction could have been had, the testimony of the aforesaid witnesses being material and necessary, if administered according to law and with the rights of the accused protected, to justify a conviction for the offense with which they were charged; and that at all stages of the proceedings, from the empanneling of the
216 jury to the rendering of the verdict, these defendants at all times asserted the protection of the fourteenth amendment of the Constitution of the United States and the guarantees thereunder; and all of which assertions and claims of the defendants were, as appears by the record, denied by the trial judge.

Third.

That after verdict and before sentence, defendants and appellants renewed their objection previously urged, and insisted that the verdict was without support under the law and the evidence, in this:

That upon the trial of said cause, they were denied the protection guaranteed to them by the fourteenth amendment of the Constitution of the United States, which in its prohibitive language and restrictive force operated upon this State and all of its agencies; that they were denied the substantial and fundamental right, guaranteed to them by the fourteenth amendment of the Constitution of the United States, of confrontation with the witnesses against them; and it was against the evidence inasmuch as, had the law been administered and the constitutional protection accorded these respondents, there would have been no evidence to submit to the jury, or none warranting and justifying a conviction for the crime charged against them.

That upon argument of the motion for a new trial upon the grounds hereinbefore recited, the trial court adhered to its former ruling, and denied to these respondents the protection asserted, and held that the proceeding was not adverse to the right claimed, but was within the right asserted, thereby holding that the action of the State in denying to these defendants and appellants the right of confrontation did not invade or impair the constitutional right of defendants asserted by them, as aforesaid.

217 Fourth.

That the accused being called to the bar for sentence upon the verdict and judgment pronounced, the defendants and appellants presented to the court for its further consideration, and as a cause for arresting the judgment pronounced, their motion in arrest of judgment, asserting and claiming, as a bar to sentence or further proceeding upon the judgment previously rendered, the protection of the fourteenth amendment of the Constitution of the United States,

which guaranteed them against the deprivation of life or liberty without due process of law, and under which they had the absolute constitutional right of confrontation with the witnesses against them; that the admission of the depositions of said Thebaud and said Manners, alias Kerns, and their personal absence, and the denial of confrontation to these defendants and appellants, was a denial of their constitutional right, thus guaranteed against invasion or impairment by the State of Louisiana or any of its agencies, executive, legislative, or judicial; and that the trial court again re-affirmed its previous ruling, denying to these defendants and appellants the protection asserted and claimed under the fourteenth amendment of the Constitution of the United States, and held the verdict and judgment sufficient, justifying sentence, and which was then and there pronounced as appears by the record.

Fifth.

That under the rules of practice in the criminal courts of this State, and in accordance therewith, a timely motion was presented for an appeal to this honorable court, in order to have the cause here reviewed upon the bills reserved and for error patent upon the face of the record; that to said motion for an appeal, the said defendants and appellants made part thereof their assignment of error, again asserting and claiming the protection accorded them by the fourteenth amendment of the Constitution of the United
218 States, guaranteeing them against the deprivation of life or liberty without due process of law, under which and by virtue of which they were to enjoy the substantial and fundamental right of confrontation with the witnesses against them; that said entire record, embodying the exceptions to the admission of the proof, the motion for a new trial, the motion in arrest of judgment, and the assignment of errors, was in due course of procedure lodged in this honorable court for consideration and decision; and that this honorable court, in deciding the cause and affirming the judgment of the lower court, in the opinion pronounced by his honor the chief justice, took no notice of the right protected by the Constitution of the United States, specially asserted and pointedly raised in the trial court and in this honorable court, and without passing upon that question there could have been no decision in this cause, unless the silence of the court is to be held and esteemed as a decision adverse to the right claimed and asserted by defendants and appellants.

Sixth.

That in this honorable court there was argued, by printed brief and orally, the right asserted and claimed by the defendants and appellants, of the protection of the fourteenth amendment of the Constitution of the United States, under which was the substantial and fundamental right of confrontation, which had been denied to

them by the trial court; and that this honorable court decided adversely to the right so asserted and claimed by these defendants and appellants; and that in this, this honorable court erred in the decision affirming the judgment of the trial court.

Wherefore, the premises considered, defendants and appellants pray that the opinion rendered herein be reconsidered; that a rehearing be granted; and that, after due and legal proceedings had, the judgment herein pronounced, affirming the judg-
218*a* ment of the trial court, be vacated and set aside, and for naught esteemed and held; and that a rehearing be granted in order that the defendants and appellants may have the opportunity, and with it the advantage, of the protection accorded them by the fourteenth amendment of the Constitution of the United States, under which they have the absolute right of confrontation with the witnesses called against them; and petitioners pray for all necessary and further orders in the premises, and for general relief.

(Signed) HENRIQUES & DUNN,
(Signed) HENRY L. LAZARUS,
*Of Counsel.*

N. O. Jan'y 14/03.

(Endorsed:) No. 14525. Supreme court State of Louisiana. State of Louisiana *vs.* George I. Kline, and Robert L. West. Petition for rehearing. Filed Jan'y 14, 1903. (Signed) T. McC. Hyman, clerk.

*Rehearing Refused.*

(Extract from Minutes.)

NEW ORLEANS, FRIDAY, *February 6th*, 1903.

The court was duly opened, pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice, Joseph A. Breaux, Newton C. Blanchard, Frank A. Monroe, Olivier O. Provosty, associate justices.

By the court:—

STATE OF LOUISIANA
*vs.*
GEORGE I. KLINE and ROBERT L. WEST. } No. 14525.

It is ordered that the rehearing applied for in this case be refused.

*Petition for Writ of Error.*

219 Supreme Court, State of Louisiana.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. —.

To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of Robert L. West and George I Kline, petitioning herein respectively, each upon his own behalf, and both of whom are citizens of the United States and residents of the State of Louisiana, with respect represents:

That in the above entitled and numbered cause, pending in this honorable court on appeal from the criminal district court in and for the parish of Orleans and State of Louisiana, section "B," and wherein your petitioners were appellants, the supreme court of the State of Louisiana did, on the 5th day of January, 1903, render a judgment and decree against your petitioners and each of them, in a certain cause wherein The State of Louisiana was plaintiff and prosecutor, and your petitioners and each of them were defendants; by which said judgment of said supreme court of the State of Louisiana it was ordered, adjudged, and decreed, that the judgment of the court of first instance—to-wit, the criminal district court for the parish of Orleans, State of Louisiana—be and the same was thereby affirmed against your petitioners and each of them; the decree and judgment of the court of first instance being based upon the verdict of a jury called to try the said cause of the State of Louisiana against your petitioners, Robert L. West and George I. Kline, and which judgment condemned and sentenced your petitioners and each of them to imprisonment at hard labor for a period of three years from the date of said sentence and the execution thereof, the defendants and each of them being condemned to pay the costs of prosecution.

That thereupon and within the legal delays, your petitioners presented to the honorable the supreme court of the State of Louisiana an application for a rehearing of said cause, and in their said
220 application they again invoked the protection of the fourteenth amendment to the Constitution of the United States, as will more fully and at large appear by reference to their petition in that regard, which is to be considered and treated as though set forth in this petition *in extenso*.

That their said application for a rehearing, after due and proper proceedings had, was, on the 6th of February, 1903, denied and refused by the honorable, the supreme court of the State of Louisiana;

that thereby the affirmants of the judgment of the court of first instance, by the honorable the supreme court of the State of Louisiana, on the day and date aforesaid, became and is final; and that said honorable the supreme court of the State of Louisiana, pronouncing said decree in affirmance of the judgment of the court of first instance, is the highest court in the State of Louisiana ... which a decision in said proceedings can be had.

Your petitioners aver that they are aggrieved by said judgment and proceedings in said suit and cause; that in said judgment and the proceedings had prior thereto in said cause, errors were committed to the prejudice of your petitioners, in this: that there was, in said suit, cause, or prosecution, drawn in question the validity of a statute or constitution of, or an authority exercised under a State, on the ground of its being repugnant to the Constitution or laws of the United States, and the decision in said suit was in favor of its validity; that rights, titles, privileges and immunities were in said suit, cause, or prosecution claimed by petitioners under the Constitution and statutes of and commissions held and authorities exercised under the United States, and the decision in said suit was against the titles, rights, privileges, and immunities specially set up and claimed therein by petitioner under such Constitution, statutes, commissions, and authority, as will hereinafter more fully appear, and which will more particularly appear by the assignments of error forming part of this petition, which are annexed hereto and are to be considered as part hereof.

221 That under an information lodged by the district attorney of the parish of Orleans, who, by the constitution and laws of the State of Louisiana, is charged with the duty of prosecuting in this behalf, your petitioners were charged with the offense of grand larceny, a crime denounced by the laws of the State of Louisiana, and punishable under the statutes of said State by imprisonment at hard labor; that to said charge, after due proceedings, your petitioners were arraigned and plead "Not guilty;" that upon the issues formulated the cause was duly assigned for trial; that upon the trial thereof, the State of Louisiana, through the district attorney prosecuting in that behalf, tendered and offered to read in evidence, before the trial or traverse jury, the *ex parte* transcript of a certain deposition said to contain the testimony delivered by one Paul G. Thebaud and one T. E. Manners, alias Kern, before the Hon. T. M. Gill, Jr., judge of the first city criminal court in and for the city of New Orleans and *ex officio* committing magistrate, being a court of inferior and primary jurisdiction.

That prior to the reading of said *ex parte* depositions of the said Paul G. Thebaud and the said T. E. Manners, alias Kern, the State having failed to lay a proper and sufficient predicate to justify the administration in evidence of said *ex parte* depositions, timely objection was made to their introduction and reading before the trial or traverse jury, on behalf of the petitioners and each of them, and to the administration of the proof tendered.

That the trial court overruled the objections interposed on behalf of petitioners and each of them, and admitted the said *ex parte* statements of said Paul G. Thebaud and T. E. Manners, alias Kern, as evidence, and allowed the same to be read to the trial or traverse jury, and instructed the said jury that the recitals contained in said *ex parte* depositions were to be considered as effective as though the said Thebaud and the said Manners, alias Kern, had presented themselves at the bar of the court to deliver their testimony orally, and had confronted the accused during the progress of the trial before the traverse jury.

That the admission and administration of the statements
222 contained in the depositions aforesaid, as evidence, going to the jury in support of the charge contained in the information aforesaid, denied to your petitioners the fundamental and substantial right of confrontation with the witnesses against them in a criminal prosecution, and which right of confrontation in criminal cases is protected and guaranteed by the force and virtue of the fourteenth amendment to the Constitution of the United States, which protects your petitioners in the possession of their lives, their liberty, and their property, and of which they cannot be deprived without due process of law.

That the action and ruling of the trial court in the admission of the depositions in this regard was a denial of the benefits, advantages, immunities, and protection of the Constitution of the United States, and particularly of the fourteenth amendment to the said Constitution of the United States.

Petitioners further represent that, as appears by the bills of exception embodied in the record, and upon the record itself in its entirety, embracing therein all the evidence administered in the case, there was no evidence whatever, warranting or justifying the conviction had and the judgment pronounced, without the statements of said Paul G. Thebaud and said T. E. Manners, alias Kern, as embodied in their alleged *ex parte* depositions, and which the jury were charged to consider and did consider as evidence in the case, and upon which their verdict was necessarily based.

Petitioners further represent that on appeal or writ of error to the honorable, the supreme court of the State of Louisiana, and as part of their proceedings on the order or motion for appeal, and contained in the transcript of appeal, there were assignments of error, asserting and claiming on behalf of petitioners and each of them, the protection guaranteed to them and each of them by the Constitution of the United States, and particularly the fourteenth amendment to said Constitution of the United States, said assignments of error specifically indicating in what respects petitioners were entitled to the privileges, immunities, and protection guaranteed by the Constitution of the United States, and indicating partic-
223 ularly that the administration and admission of the *ex parte* depositions of said Thebaud and said Manners, alias Kern, was in violation of petitioners' substantial and fundamental right of

confrontation with the witnesses against them in a criminal prosecution, which right of confrontation is guaranteed and protected under and by virtue of the fourteenth amendment to the Constitution of the United States, which prohibits the State, or any of its departments or agencies, from depriving any person of his life, liberty, or property without due process of law.

That the honorable the supreme court of Louisiana, having considered the case and decided the same by affirming the judgment of the trial court, denied by its decision and decree the privileges, immunities, and protection claimed and asserted by petitioners under and by virtue of the Constitution of the United States, and more particularly the fourteenth amendment thereto; andz that said honorable supreme court of the State of Louisiana, in its opinion and decree, having considered as good and sufficient proof the declarations contained in the *ex parte* depositions of said Paul G. Thebaud and said T. E. Manners, alias Kern, as heretofore shown, denied to petitioners that protection guaranteed to them by the fundamental law *law* of the land, of confrontation with the witnesses against them in a prosecution by the State for a crime charged to have been committed by your petitioners.

Petitioners refer to the assignments of error filed herewith, and pray that the same be considered, for the purpose of this petition, as a part hereof.

Petitioners pray that a writ of error may be allowed, granted, and issued herein, to the said supreme court of the State of Louisiana, which now has the record in said cause, for the removal of said cause into the Supreme Court of the United States, to the end that said errors complained of in said judgment and the proceedings in said cause, may be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; that a transcript of
224 the record, proceedings, and papers in said cause, duly authenticated, may be sent to said Supreme Court of the United States in accordance with law; that an order be made fixing the amount of security which petitioner shall give and furnish upon said writ of error, if security should be exected by the court in order that the supersedeas may be operative; that upon giving such security all further proceedings in the honorable the supreme court of the State of Louisiana be suspended and stayed until the determination of said writ of error by the said Supreme Court of the United States; and your petitioners will ever pray.

(Signed) HENRY L. LAZARUS,
*Att'y for Petitioners.*

(Signed) A. D. HENRIQUES,
" ARTHUR DUNN,
" H. MICHEL,
*Of Counsel.*

*Endorsement of the Chief Justice of the Supreme Court of Louisiana on the Petition for Writ of Error.*

The writ of error applied for is hereby granted as prayed for though I have serious doubts whether any Federal question is involved.

(Signed) FRANCIS T. NICHOLLS,
*Chief Justice.*

New Orleans, February 9th, 1903.

(Endorsed:) No. 14,525 Supreme court State of Louisiana. State of Louisiana *vs.* Robert L. West and George I. Kline. Petition for writ of error. Filed February 16th, 1902. (Signed) T. McC. Hyman, clerk.

*Assignment of Errors.*

225 Supreme Court, State of Louisiana.

STATE OF LOUISIANA
*vs.*
ROBERT L. WEST and GEORGE I. KLINE. } No. —

Assignments of error.

Now come the plaintiffs in error, and each of them, severally and in his own behalf, and on their writ of error from the Supreme Court of the United States say that in the record and proceedings in said cause, there is manifest error to their prejudice, which they assign as follows, to-wit:

I.

That the said supreme court of Louisiana erred in deciding against the validity of an authority exercised under the authority of the United States, drawn in question in this case.

II.

That the said supreme court of Louisiana erred in deciding against the title, right, privilege, and immunity specially set up and claimed by plaintiffs in error under the Constitution and statutes and authority exercised under the United States.

III.

That the said supreme court of Louisiana erred in deciding in favor of the validity of the statutes and authorities exercised under the

State of Louisiana, drawn in question in this case, on the ground of their being repugnant to the Constitution and laws of the United States.

IV.

That the honorable the supreme court of Louisiana erred in denying to the defendants the privileges and immunities accorded them by the fourteenth amendment to the Constitution of the United States, and which privileges and immunities, as citizens of the United States, they specially plead, demanding, in accordance with law, their maintenance by the court and the reversal of the verdict and judgment pronounced thereon, in the trial court, against the plaintiffs in error.

226

V.

That the honorable the supreme court of Louisiana erred in denying to plaintiffs in error, as citizens of the United States, the protection of the Constitution of the United States and of the amendments thereto; that defendants were tried and convicted without the benefits, advantage, and protection guaranteed to them by the fourteenth amendment to the Constitution of the United States, whereas they should have had, at all stages during their said trial, the benefit and protection of said amendment, and particularly of so much thereof as guarantees to them due process of law; and that the refusal and denial of the said supreme court of Louisiana to accord them this constitutional right in the course and progress of said trial, and at all times since, is assigned as error herein.

VI.

That the honorable the supreme court of Louisiana erred in that, during the progress of the trial before the traverse jury, the *ex parte* depositions of one Paul G. Thebaud and one T. E. Manners, alias Kern, were administered and allowed, and considered by the traverse jury under the ruling of the trial judge, after timely objection; which depositions and the statements therein contained, so administered, were material and controlling in the cause, and without which, as appears by the record, no conviction could have been secured; and that the admission of said *ex parte* depositions, the consideration of the same by the jury under the directions of the court, and the denial to the accused of the right of confrontation with the witnesses against them, were in violation of the rights of plaintiffs in error, in violation of the common law, and in violation of the fourteenth amendment to the Constitution of the United States, which guaranteed to plaintiffs in error, and to each of them, due process of law.

VII.

That said trial court erred in allowing the administration of the *ex parte* depositions of said Paul G. Thebaud and T. E. Manners,

alias Kern, and directing the consideration of the same by the trial or traverse jury, depriving plaintiffs in error, and each
227 of them, of the benefits, advantage, and protection guaranteed to them by the fourteenth amendment to the Constitution of the United States, under which amendment is embraced the substantial and fundamental right of confrontation in criminal cases with the witnesses against the accused, and which said right, with the limited exceptions fixed by the common law, is absolute, and its denial or limitation is in violation of the fourteenth amendment to the Constitution of the United States, guaranteeing to all the citizens of the United States due process of law.

VIII.

That the said court erred in maintaining the right of the trial court to withdraw an issue of fact from the jury—to-wit, whether the proper predicate had been established by the evidence administered, to admit of substituted proof of a fact material to the State's case; that under the common law as administered in the State of Louisiana, and under the protection of due process of law accorded by the fourteenth amendment to the Constitution of the United States, the question as to whether a proper predicate had been laid for the administration of subordinate and secondary proof, was a question determinable not by the court but by the jury, and before the administration of secondary proof, and particularly the *ex parte* depositions of the said Thebaud and the said Manners, alias Kern; and that the action of the court, as appears by the record, in determining a question of fact which should have been, under the laws and Constitution of the United States, submitted to the jury, violates petitioners' rights under the common law and as protected by the said fourteenth amendment to the Constitution of the United States, inasmuch as it operates a denial of the benefits and protection accorded to the plaintiffs in error by the said fourteenth amendment to the Constitution of the United States.

IX.

That the trial court erred in admitting, and the said supreme court of Louisiana erred in considering, the *ex parte* depositions of said Thebaud and said Manners, alias Kern, inasmuch as there was not a sufficient predicate laid, under the common law, for the
228 administration of that character of proof, it not being shown that the parties whose depositions were sought to be used were dead, or insane, or absent by the connivance or procurement of the accused; and the court, by its act in the admission of said depositions, with directions to the jury to consider the same, denied to plaintiffs in error, and to each of them, the benefits, advantage, and protection guaranteed to them by said fourteenth amendment to the Constitution of the United States, inasmuch as they had not an oppor-

tunity of confrontation with the witnesses against them, and the pretended statements made by said Thebaud and said Manners, alias Kern, were not admissible as evidence against plaintiffs in error, or either of them, and should not have been submitted by the trial court to the traverse jury, nor considered by the honorable the supreme court of Louisiana, in the absence of a predicate fully established under the conditions and limitations of the common law; that without the establishment of such predicate, the character of proof aforesaid should not have been admitted or considered; and its consideration by the traverse jury, under the directions of the trial court, and the affirmance by the honorable the supreme court of Louisiana of the action of the trial court in this regard, was in disregard of the protection guaranteed to plaintiffs in error by the fourteenth amendment to the Constitution of the United States, prohibiting a State, and each and all of its agencies, from depriving any person of his life, liberty, or property, without due process of law.

Wherefore, plaintiffs in error pray that the judgment of said supreme court of Louisiana be reversed, and for such further proceedings as law and justice may require.

(Signed) HENRY L. LAZZRUS,
*Att'y for Petitioner.*

(Signed) A. D. HENRIQUES,
ARTHUR DUNN,
H. MICHEL,
*Of Counsel.*

(Endorsed:) No. 14,525. Supreme court State of Louisiana. State of Louisiana *vs.* Robert L. West and George I. Kline. Assignment of errors. Filed 16th February, 1903. (Signed) T. McC. Hyman, clerk.

*Copy of Writ of Error.*

229 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said cause or prosecution in the case of The State of Louisiana *versus* Robert L. West & George I. Kline before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana *vs.* Robert L. West and George I. Kline, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exer-

cised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Robert L. West and George I. Kline as by their complaint appears. We being willing that error, if any hath been, should be duly correctrd, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to 230–232 be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 14th day of February, in [SEAL.] the year of our Lord one thousand nine hundred and three, 1903.

(Signed) H. J. CARTER,
*Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by

(Signed) FRANCIS T. NICHOLLS,
*Chief Justice of Louisiana.*

(Endorsed:) No. 14,525 Supreme court of Louisiana. State of Louisiana *versus* (writ of error) Robert L. West and George I. Kline. Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 16th day of February one thousand nine hundred and three. (Signed) Henry L. Lazarus attorney for plaintiff in error. Filed 16th February, 1903. (Signed) T. McC. Hyman, clerk.

233 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said cause or prosecution in the case of The State of Louisiana *versus* Robert L. West & George I. Kline before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana *vs.* Robert L. West and George I. Kline wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution,
234 or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Robert L. West and George I. Kline as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 14th day of February, in the year of our Lord one thousand nine hundred and three—1903.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

H. J. CARTER,
*Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by—
FRANCIS T. NICHOLLS,
*Chief Justice of Louisiana.*

[Endorsed:] No. 14,525. Supreme court of Louisiana. State of Louisiana *versus* Robert L. West and George I. Kline. Writ of error. Filed 16 Febr'y, 1903. T. McC. Hyman, clerk.

235 Supreme Court of the State of Louisiana.

The President of the United States to the State of Louisiana, through its duly recognized and accredited officer upon whom process can be legally served, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana at New Orleans, wherein Robert L. West and George I. Kline are plaintiffs in error and The State of Louisiana is defendant in error to show cause, if any there be, why the judgment rendered against the said Robert L. West and George I. Kline as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of February, in the year of our Lord one thousand nine hundred and three (1903).

FRANCIS T. NICHOLLS,
*Chief Justice of the Supreme Court of the State of Louisiana.*

236 [Endorsed:] Supreme court of the State of Louisiana. No. 14,525. State of Louisiana *vs.* Robert L. West and George I. Kline. Citation. Sheriff's return. Filed Febr'y 16, 1903. T. McC. Hyman, clerk.

Office of Att'y General of the State of La.

NEW ORLEANS, *Feb'y* 16, 1903.

As attorney general of the State of Louisiana I hereby accept service of the above citation and of the writ of error allowed in the cause of The State of La. *vs.* Robert L. West & George I. Kline & waive copy of same.

WALTER GUION,
*Att'y Gen'l of Louisiana.*

237 UNITED STATES OF AMERICA,
*State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing two hundred and thirty *one* pages contain a full, true and complete transcript of the proceedings had in the criminal district court for the parish of Orleans in a certain suit wherein The State of Louisiana was plaintiff and Robert L. West and George I. Kline were defendants; and also of all the proceedings had in this supreme court on the appeal taken by the said defendants, which appeal is now on the files thereof under the No. 14,525.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-fifth day of February, anno Domini, one thousand nine hundred and three, and in the one hundred and twenty-seventh year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

UNITED STATES OF AMERICA,
*State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe
238 Hyman is clerk of the supreme court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law; and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this twenty-fifth day of February, *anno Domini*, one thousand nine hundred and three.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
*Chief Justice.*

UNITED STATES OF AMERICA,
*State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the Honorable Francis Tillou Nicholls, is, and was, at the time of signing the foregoing document, chief justice of our supreme court; and that the signature affixed to the same is in the proper handwriting of him, the said chief justice.

In testimony whereof, I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this the twenty-fifth day of February, *anno Domini* one thousand nine hundred and three.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

Endorsed on cover: File No. 18,855. Louisiana supreme court. Term No. 230. Robert L. West and George I. Kline, plaintiffs in error, *vs.* The State of Louisiana. Filed March 7, 1903. File No. 18,855.